



# AIRSIDE MODERNIZATION PROJECT

HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT

REQUEST FOR PROPOSAL

FOR

CONSTRUCTION MANAGER AT RISK SERVICES

January 7, 2016

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Delta Air Lines ATL Airside Modernization  
Construction Manager at Risk Request for Proposal

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## 1.0 INVITATION TO SUBMIT PROPOSAL

By this Request for Proposal (RFP), Delta Air Lines, Inc., with offices at Dept. 877 Properties & Facilities, P.O. Box 20706, Atlanta, GA 30320, is hereby requesting proposals from construction firms for the award of a Construction Manager at Risk (CMR) Construction Guaranteed Maximum Price (GMP) contract for pre-construction and construction services for the Delta Air Lines ATL Airside Modernization Project, located at the Hartsfield-Jackson Atlanta International Airport in Atlanta, Georgia.

## 2.0 PROJECT DESCRIPTION

Delta is the largest airline operating at Hartsfield-Jackson Atlanta International Airport (ATL) and continually strives to improve its customer experience. As part of their improvement initiative, Delta will be modernizing its existing gate hold rooms and adjacent concourse corridors to upgrade its passenger's experience within the Central Passenger Terminal Complex.

Delta's existing gate hold rooms and adjacent concourse corridors will need to be altered, modified and renovated to bring them up to current Delta and Department of Aviation (DOA) standards. Eighty-five (85) gate hold rooms and their associated main concourse corridors will be impacted. The breakout is as follows:

- Concourse T – South: 8 gate hold rooms and concourse corridor
- Concourse A: 29 gate hold rooms and concourse corridor
- Concourse B: 32 gate hold rooms and concourse corridor
- Concourse C – North: 16 gate hold rooms and concourse corridor

The proposed design per hold room may include, but not limited to:

The removal of existing single glazing storefront systems and additional portions of exterior walls; addition of new double glazed insulated storefront systems, clerestory double glazed insulated ribbon window system above the storefront systems, new drywall drop headers; removal of existing ceilings to be replaced with new sloped ceiling; new lighting; modifications required for HVAC distribution, fire protection, etc.; repainting of all hold rooms and replacement of carpet, hold room seating and gate podiums unless noted otherwise (UNO).

The proposed design per concourse corridor may include, but not limited to:

Remove and discard the existing mineral fiber ceiling tiles and suspension systems, and replace with new metal panels and suspension system; adjustments of HVAC branch ductwork as needed, repaint all walls and the installation of new lighting.

The phasing of the work will be such that all airline and airport operations are maintained at all times and will need to include a system of temporary movable construction partitions suitable for public spaces, be easily configurable, and potentially be able to receive graphic patterns and/or signs on one side. Due to the repetitive nature of the work, it is highly possible for construction to occur on two concourses simultaneously after several initial gates have been completed.

Detailed safety and security plans will need to be developed, reviewed and approved with DOA Safety and TSA prior to any work beginning. The FAA may require Form 7460 be submitted to address equipment (cranes, boom trucks, etc.) that may be required to perform exterior work. The FAA & DOA advised recently of increased timeframe for approval. Per the ATL DOA, this process now takes 100 days.

The proposed work for the gate hold rooms and concourse corridors are depicted in ***Exhibit J – 65% Design Development Documents***.

### 3.0 PROJECT GOVERNANCE

Delta leases the gate hold rooms and has a use and lease agreement with the DOA. Delta will be required to abide by all DOA requirements noted in section [2.0 Project Description](#) including drawing reviews, coordination meetings, building inspections, and construction safety monitoring. The CMR will likewise be required to understand and comply with these same requirements.

#### 3.1 Tenant Reimbursement Agreement

Delta and the City of Atlanta (COA) DOA intend to enter into a Tenant Reimbursement Agreement (TRA) whereby Delta will manage the construction of the gate hold rooms and concourse corridors noted in Section 2.0 Project Description. In turn, Delta will be reimbursed for costs associated with the management and construction.

The CMR firm will be required to coordinate with Architect and Delta Project Manager to ensure proper documentation and reporting is achieved to ensure reimbursement to Delta.

The CMR firm will coordinate with Delta's Financial Controls Manager to develop the necessary Project schedule of values, cost allocations, invoicing and reporting requirements.

#### 3.2 Supplier Diversity

Goals for Supplier Diversity are identified in ***Exhibit K – Supplier Diversity***.

### 4.0 PROJECT TEAM ORGANIZATION

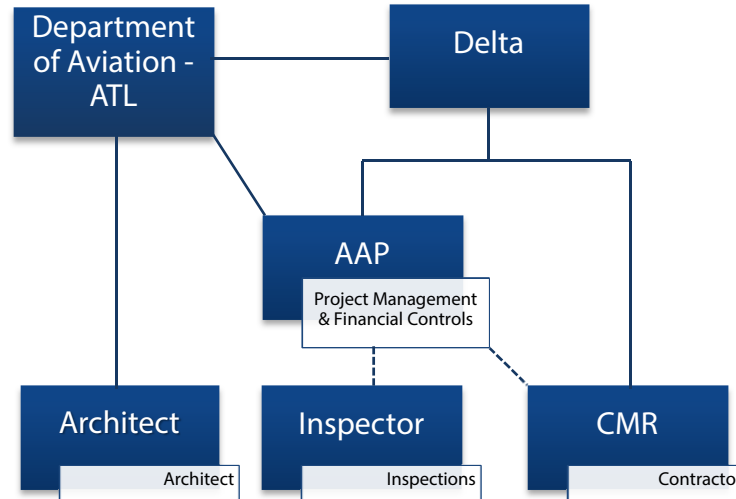
Delta has, or will be, contracting with several firms to provide project management, financial controls, construction, and inspection services. These firms along with the DOA will comprise the Project Team.

Delta has contracted with AvAirPros, Inc. (AAP) to provide Project Management Services and to be the primary point of contact based in ATL. AAP will provide day-to-day project management, acting as Delta's representative for all project matters. AAP will also provide Financial Controls Management Services, overseeing the contract documentation requirements, managing the TRA process, and ensuring financial controls are maintained throughout the project.

Architect has been contracted by the DOA to provide architectural design services, construction documents, and construction administration services. (Architect) shall mean collectively, HKS, Inc., Corgan Associates, Inc., and Fitzgerald Collaborative Group, LLC.

A third-party inspections firm (Inspector) will be retained by Delta to assist the Project Team with the inspections of all CMR work.

The CMR will be an integral part of the Project Team. The organizational chart for the Project Team is shown below.



## 5.0 PROJECT SCHEDULE

In general, Pre-Construction Services will commence upon the Notice of Intent to Award of this RFP and conclude upon award of the Construction Contract. Construction Services will commence upon acceptance of the GMP and conclude upon completion of actual construction (excluding the warranty period noted in the Construction Agreement) which includes submittal and approval of all required project closeout documents, and final payment being made.

The schedules below are for reference in preparation of the RFP. Dates are subject to change and will be further refined during the Pre-Construction Services phase.

### 5.1 Solicitation Schedule

The Solicitation schedule for the ATL Airside Modernization Project is outlined below for use in preparing a response to this RFP:

RFP Issued .....	January 5, 2016
Pre-Proposal Meeting .....	January 14, 2016
RFI Period (Process & Qualifications) .....	January 18 - 26, 2016
Responses to RFI's due.....	January 29, 2016
Proposals due .....	February 1, 2016
Interviews (if necessary) .....	February 2 - 5, 2016
Selection & Notice of Intent to Award .....	February 11, 2016
Project Team Meeting.....	February 16, 2016

*Any changes to the solicitation schedule will be made by Delta and communicated accordingly.*

### 5.2 Pre-Construction & Construction Services Schedule

Reference attached in **Exhibit L – Preliminary Project Schedule**.

The CMR shall utilize this schedule as the basis for preparing its response to this proposal and as the basis for evaluation criteria outlined in section [7.0 Proposal Evaluation Criteria](#).

## 6.0 SCOPE OF SERVICES

Delta has chosen to obtain the services of a construction firm familiar with the CMR GMP project delivery method. The intent is to take advantage of the benefits this type of project delivery method offers by incorporating the CMR as part of the overall Project Team to help manage and control:

- Scope
- Schedule
- Budget

In addition, the CMR will be expected to provide value-add input on all aspects of these areas. Further, the CMR is expected to cultivate and maintain professional working relationships with all Project Team members.

The selected CMR firm shall be licensed to practice in the State of Georgia and if awarded the Construction Services shall contract with all subcontractors and suppliers (glazing, mechanical, electrical, plumbing, etc.) as may be required to construct the gate hold rooms and corridors. Responses to this RFP are being solicited to include Pre-Construction Services and Construction Services required for completing the project.

### 6.1 Pre-Construction Services

The CMR shall participate in the continuing design process of the construction documents for the Airside Modernization Project. The form of contract for these services is included as **Attachment A – Construction Agreement – Construction Manager at Risk**

As an integral member of the Project Team, the CMR shall perform Pre-Construction Services which, in general, include:

1. Reviewing design elements and making recommendations with respect to cost effectiveness, constructability and consistency with local and traditional trade practices;
2. Preparing a budget estimate of component, system, and total construction costs. This estimate should reconcile with the summary provided in **Exhibit N – Pre-Construction and Construction Service Fees** and the responsibilities/allocations provided in **Exhibit O – Estimated Construction Values by Trade**.
3. Providing Value Engineering and recommendations of material alternatives;
4. Scheduling critical design and construction activities for the Project, including identification of long-lead items for pre-purchase consideration;
5. Recommending a bid-packaging strategy relative to the project approach and other pertinent considerations;
6. Recommending and pre-qualifying subcontractors to develop a bidder's list for review and approval by Delta.
  - a. The CMR must ensure a minimum of three (3) competitive bids for each bid package. In the event that three bids are not possible the CMR must notify Delta and provide supporting justification; and
7. Preparing site and mobilization logistics plans.

It is expected that the CMR will fully integrate with the Project Team during the Pre-Construction Services phase and provide collaborative feedback. It is expected that the CMR will have open dialogue with the project team rather than formal submission of RFIs.



## 6.2 Initial & Final Guaranteed Maximum Price

### 6.2.1 Initial Guaranteed Maximum Price

An Initial Guaranteed Maximum Price (IGMP), including an estimate of comprehensive General Condition's costs, shall be established and based upon the preliminary documents provided as part of this RFP.

As part of Pre-Construction Services, the IGMP shall be updated upon the completion of the 95% design documents by the Architect.

The purpose of the IGMP is to ensure the project is within budget and is maintained within that budget during the course of design.

### 6.2.2 Final Guaranteed Maximum Price

The Final Guaranteed Maximum Price (FGMP) will be established based on the 100% construction documents; including drawings and specifications.

At such time as the FGMP is established, the CMR's Fee shall be incorporated as a stipulated lump sum. This Fee will not be subject to reduction if the Cost of the Work can be reduced through the efforts of the Project Team, via design refinement, or by the CMR, via procurement efforts. However, abandonment or a significant reduction in the scope or magnitude of the Project would result in a negotiated reduction of the Fee.

Conversely, the Fee shall not be increased for changes in scope, which can be absorbed by any contingency amount established with the Total Cost of the Work. The Fee is only subject to increase should a significant additive scope change occur, which would necessitate a Change Order to increase the FGMP.

To the extent the actual Cost of the Work may be reduced through the course of design refinement, procurement and construction, the reduction in cost shall revert entirely to the benefit of the Owner. There shall be no "shared savings" compensation to the CMR.

***It is Delta's policy that qualified contractors, subcontractors and suppliers bid on the procurement packages of the Project, and further, that awards are then based upon the responsible and conforming bids received.***

In order to comply with the above criteria, the CMR shall develop a procurement strategy acceptable to the Owner, and then diligently implement and document its effort to successfully execute the strategy. The Owner shall have the opportunity to review/recommend edits to the bidders list prior to going out to the subcontracting community.

## 6.3 Construction Services

Specific requirements for Construction Services are described in the ***Attachment A – Construction Agreement – Construction Manager at Risk***. Additionally, the following criteria will be required during the Construction Services phase:

1. Assume the primary responsibility for the overall administration of the construction contract on behalf of Delta;
2. Provide a full field staff throughout construction for the purpose of managing, inspecting, scheduling, and coordinating subcontractors. Monitor the progress, performance, quality and contract compliance of the subcontractors' activities, and maintain weekly logs of construction activities and provide the Project Team copies of same upon request;

3. Schedule and conduct weekly progress meetings and other necessary meetings as needed;
4. Develop and maintain a detailed master construction schedule in a critical path format in **Primavera P6** with updates on a monthly basis. Provide three-week look-ahead schedules at weekly progress meetings;
5. Request pricing, review and negotiate costs and make recommendations on all necessary changes in the contracts;
6. Coordinate construction interfaces, methods, techniques and sequences;
7. Institute and administer requirements and procedures for the review and approval of all Requests for Information and submittals;
8. Prepare and administer all cost requirements and procedures for the review and approval of all submittals;
9. Coordinate all requirements of project commissioning and closeout procedures including, but not limited to: inspections, Delta and/or the DOA's orientation, familiarization, and collection of all closeout documents;
10. Develop an occupancy schedule in cooperation with Delta; and
11. Moderate, seek solutions, make recommendations or take other appropriate actions in matters relating in disputes between subcontractors, work stoppages, labor disputes or other disruptions that may occur during the construction of this Project.

#### 6.4 Construction Contracts Bid & Award

The CMR will be responsible for developing and soliciting construction bid packages and to solicit at least three (3) proposals for each bid package. The CMR will be responsible for reviewing each proposal received and providing a recommendation for award. The CMR will be responsible for awarding and holding all subcontracts for the work.

The CMR will recommend and include in the bid packages procurement language that establishes a value for subcontractors' overhead and profit. It is the intent of Delta that the overhead and profit proposed by each selected subcontractor will be the same overhead and profit used for any change orders issued.

#### 6.5 Value Engineering

At Delta's discretion, a Value Engineering exercise may be conducted to reduce project costs and preserve the CMR contract. The CMR shall assist the Project Team, at no additional cost, with providing cost reducing alternatives in coordination with the Architect.

#### 6.6 Furnishings, Fixtures & Equipment

A furnishings, fixtures, and equipment (FF&E) package, comprised primarily of carpet, hold room seating and millwork, will be developed by Delta. The CMR will be responsible for the receipt and installation of the Owner provided FF&E. The CMR will be responsible for all connection points for FF&E, including but not limited to: electrical, plumbing, mechanical, natural gas, and/or other necessary infrastructure connections.

Owner provided FF&E may include but not be limited to: carpet, powered hold room seating, gate counters and back drops.

#### 6.7 Post Construction & Project Closeout

Upon completion of the project, the CMR shall prepare and submit as-built, record drawings and specifications, Operations & Maintenance manuals, and other necessary project documents as required and in format defined by Delta and/or the DOA.

### 7.0 PROPOSAL EVALUATION CRITERIA

As part of the RFP process, Delta intends to evaluate responding CMR firms on several factors outlined below. The CMR's proposal shall, at a minimum, include the following:

#### 7.1 Firm's Organization

1. Identify specific personnel proposed for the project team. Indicate, at a minimum, the project assignment role/area of responsibility of the project executive, project manager, superintendent, engineers, and estimator(s).
2. Provide an organizational chart graphically depicting how the firm would staff and organize the proposed team for Pre-Construction and Construction services. Include delegation of responsibility and assignment of authority, and interaction points with the Project Team. Clarify where each of the personnel will be located, whether at the office or project site.
3. Provide a résumé for each proposed team member, specifically stating the years of industry experience, years of company experience, and qualifications of individual personnel in providing Pre-Construction and/or Construction Services.
4. Provide documentation that the Principle General Contractor has completed a successful single on-airport project of \$20M or greater in value.
5. Verify that the Principle General Contractor has the ability to obtain Airport Identification Badges which allows for unescorted access into the airport Secure Identification Areas (SIDA) as well as the ability to obtain vehicle permits which will allow the contractor(s) to actively drive on the AOA as required to perform the entire scope of work.
6. At least one of the Joint Venture Partners must provide documented experience in providing pre-construction, construction, or renovation services of a concourse, a major terminal or similar facility, while maintaining an existing on-going large hub airport passenger operation within the last ten (10) calendar years; and provide documented experience in coordinating and managing work with concessions or other retail settings (i.e., mall, transportation hub, government facility, etc.); and
7. A Joint Venture is required for this RFP.

#### 7.2 CMR Cost & Fees

***Exhibit M – Construction Management Cost Allocation*** should generally present the cost allocations/responsibilities to Pre-Construction and Construction Services. Additionally, this exhibit should present cost allocations to the General Conditions and Cost of the Work. The CMR shall complete this attachment when developing its IGMP. This exhibit is not all inclusive and as such the CMR is encouraged to include or exclude tasks as it believes necessary.

##### 7.2.1 Pre-Construction Services

Provide a proposed lump sum fee for Pre-Construction services on ***Exhibit N – Pre-Construction and Construction Service Fees***. The Pre-Construction Fee shall include all costs to perform the services described in section [6.1 Pre-Construction Services](#) and outlined in ***Exhibit M – Construction Management Cost Allocation***.

In the event that the project and/or the services of the CMR are terminated by Delta at the conclusion of the Pre-Construction Services phase, Delta will provide payment, including any approved changes, for Pre-Construction Services performed.

#### 7.2.2 Construction Services

The project will be performed under an open-book, cost-plus fixed fee basis with a not-to-exceed Guaranteed Maximum Price (GMP). The establishment of the GMP is part of the evaluation criteria for this proposal.

The Construction Services fee is compensation to the CMR for overhead and profit. Included in the CMR's overhead are those services and facilities furnished by the contractor without charge other than the CMR's Construction Services fee. **Exhibit M – Construction Management Cost Allocation** of this proposal identifies the items Delta expects to be covered by the fee and which are included under the general conditions. If there are any additions to these items, the firm shall identify them in this section of its response.

#### 7.2.3 General Conditions

General Conditions (GC's) will be provided to the project on a cost not-to-exceed basis within the Guaranteed Maximum price (GMP). The CMR shall provide a comprehensive cost estimate of General Conditions anticipated for this Project. GC's are the cost of work necessarily incurred by the CMR in the proper performance of the work on the project that will be reimbursed by Delta.

**Exhibit M – Construction Management Cost Allocation** itemizes the cost elements/services as to whether they are classified as a GC cost or are to be provided as part of the CMR Construction Fee. The CMR shall provide an itemized estimate of the General Conditions for this project as part of the response to the RFP. The General Conditions cost estimate shall be organized as follows:

1. Supervision (Jobsite);
2. Field Offices and Expenses;
3. Temporary Utilities;
4. Temporary Conditions;
5. Equipment;
6. Travel;
7. Engineering/Testing;
8. Clean-up; and
9. Signs/Photographs.

Provide billable rates for all pre-construction and construction staff in your response.

#### 7.3 Markups

The CMR should propose its markups as outlined in **Exhibit N – Pre-Construction and Construction Service Fees**.

#### 7.4 Self-Perform Work

The CMR shall not be precluded from self-performing work. The CMR shall identify in its proposal the approximate value of Self-Perform work, as a percentage of the total IGMP value. In addition, the CMR shall also describe the purpose for such work to be completed as Self-Perform.

The CMR should specifically address the manner in which the cost of small tools and expendable items that are necessary to self-perform the work will be reimbursed.

**Note: All reimbursable costs must be supported by actual cost that can be audited.**

7.5 Initial Guaranteed Maximum Price

The CMR shall provide an Initial Guaranteed Maximum Price (IGMP) based on **Exhibit J – 65% Design Development Documents**. The IGMP shall include a summary and detailed breakdown using the Construction Specifications Institute's MasterFormat®.

The IGMP shall include all costs noted in sections [6.3 Construction Services](#) and [7.2.3 General Conditions](#).

It is Delta's intent to utilize the IGMP for evaluation of proposals as well as to validate the overall Project budget.

7.6 Project Schedule

Prepare a detailed Pre-Construction and Construction Services project schedule based on the schedule outlined in **Exhibit L – Preliminary Project Schedule**. The CMR is encouraged to include reasonable and realistic strategies to improve upon the Project completion date. However, any final changes to the Project completion date will only be approved by Delta and after award of this RFP.

7.7 Cost Control

Describe in writing, and provide examples, of the systems you will utilize in controlling the cost for this project. Also, describe the reporting systems you will use to communicate the status of the project cost to Delta and their consultants at all times. Specifically address the Preliminary GMP, design modifications being considered during design, Final GMP, and managing the Contingency and Change Orders.

Identify the appropriate size of the contingency at both the time of the Initial GMP and the Final GMP.

7.8 Safety

Provide information regarding the following items as they pertain to your Safety Program:

1. Company-wide Safety Program;
2. Project-specific Safety Program;
3. Company safety experience: EMR & OSHA; and
4. Pre-hire drug testing program.

7.9 Quality Control

Describe the systems the Firm uses to control the quality of which the gate hold rooms and corridors will be constructed. Delta's expectations are that the firm shall have a proven comprehensive quality control plan, which begins in the Pre-Construction phase, proactive during construction, and resulting in a zero punch-list facility during project closeout.

7.10 Project Management/Communication

Describe the systems the Firm utilizes to successfully manage the planning, organizing, and monitoring of the construction project which have been employed by the firm. Proposing firms are to provide examples as an attachment in their RFP response.

7.11 Equipment Rates

Indicate how all equipment costs are determined and how they are proposed for billing to the project. All expendable supplies, fuel, oil, grease, and maintenance cost need to be included in the rental rate.

7.12 Qualification Statement

Submit an AIA Contractor's Qualification Statement, A305.

Provide documentation that the Principle General Contractor has completed a successful single on-airport project of \$20M or greater in value.

If not included in the Qualification Statement the Firm shall provide the following:

1. Bonding capacity in the form of a letter from the Firm's bonding company with current and projected (during the term of this project) work volume secured under Performance and Payment bonds;
2. Financial Statement including an Income Statement and a Sources and Uses of Funds/Changes in Financial Position Statements, preferably audited (may be submitted confidentially under separate cover);
3. Litigation history with specific detail regarding construction related litigation. Provide specific information regarding litigation in two areas; the first being current litigation and the second being historical for the past 10 years; and,
4. Dispute Resolution. **It is Delta's objective to avoid dispute and conflict in the design and construction of this Project.** Delta requires the selected CMR to provide the team leadership and assistance in the avoidance of all conflict and disputes. Delta and the Project Team are committed to achieving this goal with the CMR. The Firm shall provide its approach to dispute-resolution as it relates to the Project Approach stated by Delta above. Provide examples of the Firm's previous experience in this area with emphasis on those projects where the Firm's policies that relate to dispute-resolution were used resulting in no claims by team members.

7.13 Form of Contract

It is expected that the form of contract (**Attachment A – Construction Agreement – Construction Manager at Risk**) included with this RFP will be accepted as proposed and without exception.

If the CMR has no objections to the contract and/or related documents, the CMR shall include a statement on a separate page confirming acceptance of the contract in its entirety and signed by a manager with signatory authority.

In the event the CMR has an issue with any term, condition, or item with any part of the contract documents, the CMR is to list these issues on a separate page and signed by a manager with signatory authority.

7.14 OCC Programs

Proponents demonstrating a compliant EBO program as described in Exhibit P will be deemed responsive. Proponents who fail to evidence a compliant EBO program as described in Exhibit P shall be deemed non-responsive.

## 8.0 PROPOSAL FORMAT & SUBMISSION

CMR firms must be able to demonstrate a record of expertise and capability on similar projects of scale, scope, and complexity, as well as controlling scope changes, costs, and project schedule.

### 8.1 General Requirements

The CMR firm shall prepare its Proposal in the format described below and shall ensure that each page of its Proposal is identified with the project name, CMR's name, and page number. Any proposals not meeting the requirements are subject to rejection at the sole discretion of Delta.

1. Proposals shall be submitted in Adobe Portable Document Format (PDF) format and be formatted for reproduction on 8.5" x 11" paper, bound along the side. All text shall be clear of binding.
2. The Proposal shall not exceed 25 pages, including cover letter, text, tabs, tables, figures, resumes, and exhibits.
3. A limited number of foldout pages, permitting a maximum sheet size of 11"x 17", may be used for graphic reproductions. Foldout pages will be counted in the not to exceed page limit.

### 8.2 Cover Letter

The CMR shall prepare a cover letter, not exceeding two pages in length, which summarizes the key points of the submittal. The cover letter should include the full name of the CMR including joint venture members, if applicable. If the CMR is made up of more than one CMR the legal relationship between those CMRs must be described. The cover letter must include a statement committing the availability of key personnel to perform the work. A person who is authorized to sign an Agreement with Delta must sign the cover letter.

### 8.3 Submission

Proposals shall be submitted by: **2:00 PM EST, February 1, 2016**

Proposals must be received by the stated date and time. Any proposal received after the stated date and time may be deemed by Delta as non-responsive and disqualified.

A Proposal must be submitted in a sealed envelope(s) or package(s) and the outside of the envelope(s) or package(s) must clearly identify the name of the project: **DELTA ATL AIRSIDE MODERNIZATION PROJECT** and Proponent's name and address. All proposals must be submitted to:

**Kenneth Dodson  
Regional Manager  
Corporate Real Estate  
Delta Air Lines, Inc.  
Hartsfield-Jackson Atlanta International Airport  
Delta DASH Building  
6000 South Terminal Bypass, 2<sup>nd</sup> Floor  
Atlanta, GA 30320**

Include an electronic copy, on a single USB drive, of the Proposal in Adobe Portable Document Format (PDF). It shall be formatted for reproduction on 8.5" x 11" paper, bound along the side.

A Proponent is required to submit one (1) original and six (6) copies of its proposal.

#### 8.4 Proposal Questions

All questions shall be submitted to AAP via email to [c.campbell@avairpros.com](mailto:c.campbell@avairpros.com) only by the date noted in section [5.1 Solicitation Schedule](#). Responses to questions will be distributed to all CMR firms on the date stated. Delta and AAP will not consider telephone or in-person inquiries regarding the RFP.

CMR firms shall not contact Architect regarding questions or clarifications pertaining to this RFP including exhibits or other information prepared by Architect. Firms violating this request may be dismissed from the RFP process.

#### 8.5 Pre-Proposal Meeting

Each Proponent must attend the Pre-Proposal Meeting scheduled for Thursday, January 14, 2016 (2:00 p.m. Eastern Time), at the Technical Support Campus located at 1255 South Loop Road, College Park, Georgia 30337.

#### 8.6 Evaluation

After evaluation of the Proposals received in response to this RFP, Delta may interview the CMR firms deemed fully qualified, responsible, and suitable in an informal interview. At that time, the CMR's may be encouraged to elaborate on their qualifications, performance data, project approach and staff expertise relevant to the proposed contract. Interviews are tentatively slated for February 2<sup>nd</sup> through February 5<sup>th</sup>.

At the conclusion of the interview and on the basis of evaluation by Delta and the information provided and developed in the selection process to this point, Delta will select a CMR firm based on best value, responsiveness, and qualifications.

### **9.0 GENERAL INFORMATION AND DISCLAIMERS**

Information provided in this RFP is for information purposes only. Delta Air Lines and/or AvAirPros are not responsible for any inaccuracies or interpretations of said information. Delta makes no representations as to whether or not the Project will be undertaken or completed. Delta reserves the right to withdraw or amend the RFP at any time. All information and materials related to this RFP and project obtained by the CMR firms shall remain confidential.

Delta reserves the right to select a CMR on the basis of the proposals submitted and cancel this RFP process at any time. Delta's selection of a CMR will be made solely at Delta's discretion. Delta is under no obligation to include the respondent(s) in any further procedures or deliberations related to the selection of a CMR firm.

Delta's decision with respect to any issue relating to this RFP is final, and by submission of its proposal, the respondent acknowledges and agrees to be bound by any such decision. Delta shall not be obligated to respond to any proposal submitted, nor shall Delta be obligated in any manner whatsoever by the receipt of a proposal.

Neither Delta Air Lines nor AvAirPros will reimburse proposers for any expenses incurred by the proposer in responding to this request for proposal; including travel, preparation, reproduction, etc.



**ATTACHMENT A – CONSTRUCTION AGREEMENT – CONSTRUCTION MANAGER AT RISK**

SEPARATE DOCUMENT INCLUDED AS PART OF THIS RFP, WHICH CONTAINS CONTRACTUAL STIPULATIONS AND PROVISIONS INCLUDING, BUT NOT LIMITED TO:

EXHIBIT A – GENERAL CONDITIONS

EXHIBIT B – PROJECT SCOPE

EXHIBIT C – FGMP CHANGE ORDER FORM

EXHIBIT D – SENSITIVE SECURITY INFORMATION

EXHIBIT E – TRAVEL REIMBURSEMENT POLICY

EXHIBIT F – CONSTRUCTION DOCUMENT CHANGE ORDER FORM

EXHIBIT G – STAFFING PLAN AND BILLING RATES FOR PRECONSTRUCTION SERVICES

EXHIBIT H – CONSTRUCTION MANAGER'S STAFFING PLAN FOR CONSTRUCTION SERVICES

EXHIBIT I – E-VERIFY AFFIDAVITS

**EXHIBIT J – 65% DESIGN DEVELOPMENT DOCUMENTS**

HJAIA CPTC AIRSIDE MODERNIZATION PROJECT  
DESIGN DEVELOPMENT (DD) ISSUE  
DATED: NOVEMBER 11, 2015

THE FOLLOWING “LINK” HAS BEEN PROVIDED BY THE ARCHITECT, WHICH WILL ALLOW THE PROPOSING CMR TO DOWNLOAD THE 65% DESIGN DEVELOPMENT AIRSIDE DRAWING PACKAGE, INCLUDING SPECIFICATIONS.

LINK IS:

<https://hks.thruinc.net/Desktop/Distro/Show/008S5Y41NLR>

EXHIBIT K – SUPPLIER DIVERSITY



**SUPPLIER DIVERSITY – CRE Contract Performance Standards**

- Clause A)** ***Diverse Supplier Participation** - Delta Air Lines' Contractors and Suppliers whose bid submission (RFP and RFQ response) includes utilization of qualified small, minority, women, and veteran-owned subcontractors and suppliers shall have provided added value to their submission. This addition will further enhance Delta's evaluation of said contractor or supplier in determining best value to Delta Air Lines.*
- Clause B)** ***Contract-Specific Goals** - Contractors and suppliers shall negotiate a reasonable project-specific goal or aspirational target covering a portion of the work earmarked for participation by diverse subcontractors and/or suppliers, based upon best estimates on supplier availability. These specific goals of 17.5% AABE and 13% FBE are as per Exhibit P – EBO Goals Package.*
- Clause C)** ***Data Compilation and Reporting** – As a contract deliverable, all Delta contractors and suppliers must commit to providing periodic reporting on diverse supplier participation as prescribed by the General Manager of Strategic Programs. Progress and results will be tracked and reviewed quarterly. This electronic reporting will conform to regulatory guidelines and will provide accurate updated information on the use of diverse suppliers for all goods and services associated with Delta's work. Delta Air Lines reserves the right to conduct random spot audits on all contracts and purchases to ensure data integrity and transparency. In addition, Delta staff will periodically monitor contractor and supplier performance to validate utilization and contract compliance.*
- Clause D)** ***Supplier Development** - If Delta Air Lines is to continue to grow in an increasingly diverse global marketplace, the CRE Team and our strategic partners must enhance the level of synergy with diverse contractors and suppliers as our business partners. Candidate companies for Delta Air Lines whose response includes innovative, long-term strategies for developing the capacity of these diverse businesses shall have contributed to the economic growth of the communities in which Delta operates. This contribution is especially valued as a business and economic development strategy that results in job creation. Such practices as mentorship, joint-ventures, business incubators and other strategic alliances with diverse enterprises are strongly encouraged.*

**EXHIBIT L – PRELIMINARY PROJECT SCHEDULE**

Selection & Notice to Proceed .....	February 11, 2016
Pre-Construction Services .....	February 12, 2016 to June 16, 2016
100% Issued For Permitting Documents Issued.....	February 29, 2016
Permitting.....	March 1, 2016 to May 23, 2016
Conformed Construction Documents Issued .....	June 16, 2016
Start Construction .....	June 21, 2016
End Construction.....	June 2019

**EXHIBIT M – CONSTRUCTION MANAGEMENT COST ALLOCATION**

SEPARATE DOCUMENT INCLUDED AS PART OF THIS RFP

Bidders to use this template to prepare guidelines for the Project

**EXHIBIT N – PRE-CONSTRUCTION AND CONSTRUCTION SERVICE FEES**

The CMR must complete and include this attachment with its proposal.

**CMR Firm Name:** \_\_\_\_\_

**Pre-Construction Services**

Pre-Construction Services Fee      \$  
(Lump sum in dollars) \_\_\_\_\_

**Construction Services**

Construction Services Fee      %  
(As a percentage) \_\_\_\_\_  
*Responders to clarify and/or denote all items included within these Fees (i.e. insurance, bonding, etc.)*

**Markups (As a percentage)**

General Contractor:	_____ %
1 <sup>st</sup> Tier Subcontractor:	_____ %
2 <sup>nd</sup> Tier Subcontractor:	_____ %

**EXHIBIT O – ESTIMATED CONSTRUCTION VALUES BY TRADE**

Bidders to use this template to prepare a summary of proposed Project costs. This summary is not intended to replace the detailed schedule of values (SOV) breakdown using the Construction Specifications Institute's MasterFormat as outlined in Section 7.

DESCRIPTION	% OF CONSTRUCTION BY TRADE	VALUE BY TRADE
Trade	Percentage of Total	Value of Total
	%	\$
Demolition	%	\$
Masonry	%	\$
Metals	%	\$
Wood and Plastics	%	\$
Thermal and Moisture Protection	%	\$
Doors and Windows	%	\$
Finishes	%	\$
Furnishings	%	\$
Special Construction	%	\$
Specialties/Equipment	%	\$
Mechanical	%	\$
Electrical	%	\$
<b>Total Estimated Construction Value</b>	<b>100%</b>	<b>\$</b>

**EXHIBIT P – EBO GOALS PACKAGE**

SEPARATE DOCUMENT INCLUDED AS PART OF THIS RFP, WHICH CONTAINS CONTRACTUAL  
STIPULATIONS AND PROVISIONS FOR EBO PARTICIPATION



PLEASE REFERENCE THIS PURCHASE ORDER NUMBER ON ALL INVOICES:

WBS Element:

GL Account:

Contract #:

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*CONSTRUCTION AGREEMENT  
BETWEEN OWNER AND CONSTRUCTION MANAGER*

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where the basis of payment is

**THE COST OF THE WORK PLUS A FEE  
WITH FINAL GUARANTEED MAXIMUM PRICE (FGMP) FOR THE PROJECT**

*Owner's General Conditions of the Contract for Construction, as modified for this Project, contains the General Conditions of this Agreement and is attached hereto as Exhibit A and incorporated herein by reference.*

**THIS AGREEMENT** made as of the      day of      , 201\_\_.

By and between Owner:

DELTA AIR LINES, INC.  
Corporate Real Estate  
Department 877  
1030 Delta Boulevard  
Atlanta, Georgia 30354-1989  
Attention: Vice President - CRE

and the Construction Manager:

Attention:

WITNESSETH:

WHEREAS, Owner is the tenant under that certain Agreement and Lease of Premises, dated March 22, 1977, by and between Owner and the City of Atlanta (the “**City**”) (as the same has been or may be amended, modified, supplemented, restated, replaced, reaffirmed and/or assigned, the “**Lease**”) for Owner’s use of certain premises located at Hartsfield-Jackson Atlanta International Airport, located in Atlanta, Georgia (the “**Airport**”); and

WHEREAS, the City has started the master project of modernizing certain portions of the Airport (the “**Master Project**”);

WHEREAS, Owner has agreed, as tenant under the Lease and in connection with its rights thereunder, to handle certain maintenance of and updates to certain tenant finishes and operational spaces currently leased by Delta, with the intent of refreshing and refurbishing those spaces, including certain airside holdrooms and corridors located in the Central Passenger Terminal Complex, as more particularly described on Exhibit B attached hereto and made a part hereof (the “**Project**”), and the City has agreed to reimburse Owner therefor;

WHEREAS, the Construction Manager wishes to perform such services for Owner upon the terms, conditions, and covenants hereinafter described.

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Owner and Construction Manager agree as set forth below.

## **ARTICLE 1** **DEFINITIONS**

**1.1** The “**Contract Documents**” consist of this Agreement, the General Conditions of the Contract, the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement (including but not limited to Change Orders, Construction Change Directives, and Construction Document Change Orders), the FGMP Change Order, and the Exhibits to this Agreement. The parties hereto understand and acknowledge that Owner and the City have entered into or may enter into a reimbursement agreement pursuant to which the City reimburses Owner for the cost of the Project (the “**Reimbursement Agreement**”). The Reimbursement Agreement is integral to the development of the Project. Owner shall notify the Construction Manager of any requirements in the Reimbursement Agreement applicable to this Agreement, and the Construction Manager shall coordinate its efforts with Owner so that Owner can meet all of the requirements imposed on Owner by the Reimbursement Agreement, including entering into an amendment to this Agreement to the extent reasonably necessary.

**1.2** The Contract Documents are meant to be complementary and what is required by one is required by all. Whenever possible, the Contract Documents shall be interpreted as consistent with one another and cumulative. However, if a conflict arises between the Contract Documents, the most stringent requirement shall prevail; provided, however, that the following priorities shall apply to the interpretation of the Drawings and Specifications:

Among and between Drawings, detail Drawings shall govern over general Drawings, and larger scale Drawings shall govern over smaller scale Drawings. Figured dimensions shall govern over scaled dimensions, and work not dimensioned shall be performed as directed by the Architect. In the event of a conflict, inconsistency or discrepancy within or among the Specifications or Drawings as to the quantity or quality of work or materials or quality of construction methods, the higher quality or greater quantity shall be furnished or performed unless otherwise specifically directed in writing by the Architect. Any matters contained in the Specifications which have been omitted from the Drawings or vice versa shall be construed as though contained in both.

**1.2.1** For the purpose of this Agreement, the following terms shall have the following meanings:

**“Architect,”** shall mean collectively, HKS, Inc., Corgan Associates, Inc., and Fitzgerald Collaborative Group, LLC, and any replacement or additional design professionals retained by Owner or the City in connection with the Project.

**“Confidential Information”** shall have the meaning defined in Paragraph 12.10.

**“Construction Change Directive”** shall have the meaning defined in Paragraph 7.4.1 and Paragraph 7.5.3.

**“Construction Documents”** shall mean Drawings and Specifications which are issued for construction for all architectural, structural, plumbing, heating, electrical, mechanical, specialty or other work required for the entire Work or any portion thereof.

**“Construction Document Change Order”** shall mean a Change Order for the final Construction Documents for portions for the Work. The Construction Document Change Order shall be in the form attached hereto as Exhibit F.

**“Construction Manager”** shall mean the party to this Agreement identified as Construction Manager above.

**“Construction Manager’s Fee”** shall have the meaning defined in Paragraph 6.2.

**“Construction Schedule”** shall have the meaning defined in Paragraph 4.4.

**“Construction Services”** shall mean the Work with the exception of the Preconstruction Services.

**“Contingency”** shall be established by Owner with the Construction Manager’s assistance for the Work associated with the Project for the purpose of enabling Construction Manager to be reimbursed, as Cost of the Work, for any unanticipated costs not reasonably inferable from the applicable Contract Documents. No part of the Contingency may be used by the Construction Manager without first submitting to Owner a written request for a specific amount and justification for its use, and without receiving Owner’s written approval. This approval will not be unreasonably withheld.

**“Contract Documents”** shall have the meaning defined in Paragraph 1.1.

**“Cost of the Work”** shall have the meaning set forth in Article 8.

**“City”** shall mean the City of Atlanta, Georgia.

**“DOA” or “Authority”** shall mean the City of Atlanta Department of Aviation.

**“Drawings”** shall mean the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, which are prepared by the Architect and which show the design, location and dimensions of the Work, generally including, but not limited to, plans, elevations, sections, details, schedules, and diagrams.

**“FGMP Change Order”** shall have the meaning defined in Paragraph 5.5 and shall establish the Final Guaranteed Maximum Price for the entire Work.

**“Final Guaranteed Maximum Price”** or **“FGMP”** shall mean the Final Guaranteed Maximum Price for the construction of the entire Work, as determined in accordance with Article 5 of this Agreement.

**“General Conditions Costs”** shall have the meaning defined in Paragraph 8.1.2.

**“Hazardous Materials”** shall mean, but not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any asbestos (whether or not friable) and any asbestos-containing materials, lead, paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating waste, explosives, reactive metals, and compounds, pesticides, herbicides, radon gas, urea formaldehyde, foam insulation and chemical, biological and radioactive waste, or any other similar materials which are included under or regulated by any federal, state or local environmental laws.

**“Initial Guaranteed Maximum Price (IGMP)”** shall mean the maximum construction budget agreed upon by Owner and Construction Manager prior to establishment of the FGMP, as specified in Paragraph 5.1.

**“Preconstruction Services”** shall include all preconstruction services for the Project, including site investigation, measuring, monitoring, estimating, constructability analysis, value engineering, logistics, scheduling and other consulting services provided pursuant to this Agreement by the Construction Manager. Without limiting the foregoing, the Preconstruction Services shall include collaboration with the Architect to document existing conditions on as-built plans. This will require verifying dimensions, structure verification, determination of existing building support systems, hazardous material survey and performing exploratory services to determine “unknown conditions.” The method of compensation for Preconstruction Services differs from the method of compensation for the rest of the Work; otherwise, the Preconstruction Services are considered part of the “Work” wherever referenced.

**“Procedures Manual”** shall mean a guidance manual for administration of the Project to be developed and revised from time to time by the Program Manager and the Construction Manager and approved by Owner. For purposes of interpretation, the Procedures Manual will be secondary to this Agreement, and the General Conditions, in the event of a conflict between the Procedures Manual and such documents.

**“Program Manager”** shall mean the firm of AvAir Pros. (or any successor or additional program manager retained by Owner), employed by Owner as Owner’s representative for the Project.

**“Project”** shall mean the project described above and more particularly in Exhibit B.

**“Project Element”** means the various elements of the Project, including, without limitation, the following: Holdrooms: exterior envelope demolition; window procurement and installations; selective demolition; procure and install wall, floor and ceiling finishes; install FF&E; HVAC modifications; fire protection modifications; electrical modifications including furnish and install new lighting. Concourse Corridors: selective demolition; procure and install ceiling finishes; HVAC modifications; fire protection modifications; electrical modifications including furnish and install new lighting.

**“Project Safety Manual”** shall mean the guidance manual to ensure Project safety to be prepared by Construction Manager as provided in Article 9 of the General Conditions.

**“Project Schedule”** shall mean the high-level schedule for the Program prepared and maintained by the Program Manager.

**“Project Quality Assurance Manual”** shall mean the guidance manual to ensure Project quality to be prepared by Construction Manager and approved by Owner.

**“Specifications”** shall mean that portion of the Contract Documents which consists of the written requirements for the Project or portion thereof, including, but not limited to, the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**“Subcontractor”** means any person or entity awarded a contract for construction by the Construction Manager for performance of any part of the Work. Each Subcontractor shall be referred to throughout the Contract Documents as if singular in number and masculine in gender.

**“Supplier”** shall mean a materialman or supplier of goods or equipment to the Construction Manager for use in connection with the construction of the Work. Each Supplier shall be referred to throughout the Contract Documents as if singular in number and masculine in gender.

**“Work”** comprises both Preconstruction Services and Construction Services necessary to complete the Project and is further defined and described in Article 2.

In addition to the foregoing specifically defined terms, other capitalized terms used in this Agreement shall have the respective meanings given to them in other articles of this Agreement or elsewhere in the Contract Documents.

**1.3** All Drawings, Specifications, Contract Documents and other documents in any format (including but not limited to estimates, schedules, plans, designs, calculations, sketches, reports, computer assisted design documents (“**CADD**”), results of programs, computer disks, diskettes or tapes, charts, photographs and other data compilations from which information can be

obtained or translated), and copies thereof, furnished by or on behalf of Owner or the Architect to the Construction Manager are and shall remain Owner's or City's property, as applicable. All such documents are to be used by the Construction Manager only with respect to this Project and are not to be used on any other project. Submission or distribution of these documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of any common law, copyright, or other reserved rights of Owner, the City or the DOA.

## **ARTICLE 2** **THE WORK**

**2.1** The Construction Manager shall perform all the Work required by the Contract Documents including the Preconstruction Services and the furnishing, delivery and installation of equipment as reasonably required by or from the Contract Documents as necessary to produce the result contemplated by the Contract Documents. The Work shall include all plant, labor, transportation, equipment, materials, resources, services and appurtenances to be provided by the Construction Manager to fully complete or to be incorporated into the construction and other services required or reasonably inferable from the Contract Documents, all in accordance with the Contract Documents and in compliance with all federal, state and local laws, statutes, orders, rules, regulations, ordinances, and all rules, regulations, policies, practices, and procedures established by Owner, the DOA and the City for the Project. The Work includes Preconstruction Services and may incorporate the whole or any part of the Project. If any Work to be performed is not specifically included in Exhibit B, but is reasonably necessary to accomplish the scope of this Agreement, then such work is deemed to be included in the scope of Work to the same extent as if specifically described in Exhibit B.

**2.1.1** The Construction Manager shall be responsible for means, methods and fully-understanding and implementing the design, as it pertains to the Construction Documents, and the Construction Manager shall be responsible to comply with Paragraph 2.1 as it relates to the implementation of the Work.

**2.2** The Construction Manager agrees that the Work shall be performed in a good and workmanlike manner, free from defects not inherent in the kind specified or permitted, and that all materials shall be new and approved by or acceptable to Owner, except as otherwise expressly provided for in the Contract Documents.

**2.3** The Construction Manager shall prepare or cause to be prepared, as part of the Work, all Shop Drawings, Samples, Submittals and Detail Drawings not made a part of the Drawings, Specifications, and Addenda which are required by the Contract Documents or good construction practices in the performance of the Construction Manager's obligations under this Agreement. Although the Architect will review all Shop Drawings, Submittals, Detail Drawings, and Samples, neither the Architect nor Owner shall be responsible to the Construction Manager for any failure of the Shop Drawings, Submittals, Detail Drawings or Samples to comply with the Contract Documents or any governing codes, laws or ordinances. The Construction Manager is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules or regulations, but any non-conformity or violation of

such requirements discovered by the Construction Manager shall be promptly reported to the Program Manager and the Architect. The Construction Manager shall obtain all permits necessary to complete the Project as described in Section 4.7 of the General Conditions.

**2.3.1** The Construction Manager shall maintain copies of all Shop Drawings, Submittals and Detail Drawings, and maintain all Samples at the Project Site and shall afford Owner, the City, the Architect, and Program Manager, access to same at all times during regular working hours.

**2.4** The Construction Manager further acknowledges that it is, and will continue to be an integral part of the preconstruction team and that it is assisting, and will assist Owner in the review of the Contract Documents for their coordination and constructability, consistent with Owner's scope and intent for the Project. The Construction Manager accepts all costs of work in excess of the Final Guaranteed Maximum Price, as it may be modified in accordance with this Agreement, for all Work which is represented, set forth, or required or reasonably inferable from the Contract Documents.

**2.5** The Construction Manager shall confine its operations at the Airport site to those areas permitted by the City, the DOA and Owner and by law, ordinances, permits and the Contract Documents.

### **ARTICLE 3**

#### **THE CONSTRUCTION MANAGER'S DUTIES AND STATUS**

**3.1** Construction Manager covenants and agrees to perform the Construction Manager's duties under the Contract Documents in accordance with the highest standards of a national construction and contracting firm engaged in the performance of similar projects. The Construction Manager accepts the relationship of trust and confidence toward Owner and further covenants with Owner to furnish its best skill and judgment and to cooperate with the Architect and the Program Manager in furthering the interests of Owner.

**3.2** The Construction Manager agrees to establish and maintain for the duration of this Agreement the "**Construction Management Team**", consisting of the following named individuals:

<b>Name</b>	<b>Title</b>

and adequate support personnel, to provide efficient business administration and superintendence required to assure that an adequate supply of workers and materials are available at all times to perform the Work in the most reasonably expeditious and economical manner in accordance with the Contract Documents and consistent with the interests of Owner. The Construction Management Team members will not change, except in the following instances: (i) the death or

disability of an individual, (ii) the individual leaves the employment of the Construction Manager, (iii) the Construction Manager terminates the employment of the individual, (iv) the individual requests removal for personal or medical reasons, or (v) Owner requests removal of an individual from the Project and the Construction Manager approves, said approval not to be unreasonably withheld, conditioned or delayed. Upon removal of any Construction Management Team member as permitted in this Paragraph 3.2, the Construction Manager shall promptly notify Owner of such removal (prior to such removal, if possible), and shall propose a suitable replacement team member within five (5) days after such removal for Owner's approval. \_\_\_\_\_ and \_\_\_\_\_ shall devote all of their time to the Work referred to in this Agreement until Final Completion is achieved in accordance with the requirements of the Contract Documents.

**3.3** The Construction Manager agrees to continue its existence until all obligations under this Agreement are fully and finally satisfied.

**3.4** The Construction Manager shall maintain one record set of the Contract Documents in good order and marked currently on PDFs (or such other format required by Owner) to record all changes made during construction and the accurate location of all portions of the Work sufficient for the Architect to prepare accurate as-built drawings. The Construction Manager shall submit such documents to the Architect on a quarterly basis. Upon final completion of the Project, and as one of the requirements of Project close-out and no later than sixty (60) days after Final Completion, the Construction Manager shall deliver these record drawings (one hard copy set and one PDF) to the Owner for developing as-built documents.

**3.5** All equipment data, operation and maintenance manuals, and warranties shall be submitted to Owner or the City, as required by Owner, upon completion of the Project as provided in the Contract Documents.

**3.6** All persons employed by the Construction Manager in and about the performance of the Work shall be agents or employees of the Construction Manager, and neither the Construction Manager nor any of such agents or employees shall be deemed to be employees of Owner or the City for any purpose whatsoever, the Construction Manager being, and at all times acting as, an independent contractor hereunder and being responsible as an independent contractor to Owner.

**3.7** Any agreements between the Construction Manager and any Subcontractors (and any subsequent modifications to such agreements) shall be in writing and shall incorporate required provisions from this Agreement. Owner shall reserve the right to review and approve the subcontract agreements for specific Subcontractors and Owner shall not unreasonably withhold such approval. The Construction Manager shall not enter into any contracts with any professional consultant in connection with the Project without obtaining Owner's prior written approval.

**3.8** The Construction Manager shall be responsible to Owner for acts and omissions of the Construction Manager's employees, Subcontractors, Suppliers, their agents and employees, and other persons engaged by the Construction Manager or by any Subcontractors or Suppliers of the



Construction Manager, or their subcontractors and suppliers of any tier, performing any portion of the Construction Manager's obligations under this Agreement.

**3.9** If the Construction Manager believes or is advised by the Architect that implementation of any instruction received from Owner would cause a violation of any applicable law, including but not limited to federal, state, or local codes, statutes, regulations, ordinances, or guidance, the Construction Manager shall notify Owner in writing. Neither the Construction Manager nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

**3.10** The Construction Manager shall attend design, update or other meetings at the request of Owner or the City.

**3.11** Nothing contained in this Agreement shall create a contractual relationship between Owner and any person or entity other than the Construction Manager or between Construction Manager and any person or entity other than Owner.

#### **ARTICLE 4** **TIME OF COMMENCEMENT AND COMPLETION OF WORK**

##### **4.1 Commencement of Preconstruction Services and Construction Services.**

4.1.1 The Construction Manager shall commence the Preconstruction Services upon issuance of a written Notice to Proceed issued by Owner.

4.1.2 The Construction Manager shall commence the Construction Services within the time specified in a written Notice to Proceed issued by Owner.

**4.2** Dates for Substantial Completion and Final Completion. The Contract Time for the entire Work shall be measured from the date of the commencement of the Work pursuant to a Notice to Proceed issued by Owner.

**4.3** Time is of the Essence. TIME IS OF THE ESSENCE of this Agreement and the parties shall fulfill their respective obligations accordingly. It is understood by the parties that Owner would suffer substantial losses and damages should Construction Manager fail to have any or all of the Work completed in accordance with the Contract Documents on or before the Substantial Completion Date (as hereinafter defined); however, it is also understood and agreed that the extent of Owner's losses and damages from such failure may be impossible or extremely difficult to ascertain. Therefore, Owner and Construction Manager agree that the per diem amount of liquidated damages applicable to the Project for each day beyond the Substantial Completion Date that Construction Manager fails to achieve Substantial Completion shall be **and No/100 Dollars (\$0.00)**. Such liquidated damages shall not apply to the extent such failure is caused by acts or omissions set forth in Paragraph 4.5. In establishing the liquidated damages amount for the Work, the parties have considered the types of actual costs that Owner may incur as a result of Construction Manager's failure to timely complete the Work and agree that the amount specified herein is a reasonable estimate of the probable loss. The liquidated damages

calculated pursuant to this Paragraph are not intended as a penalty, and shall be in lieu of Owner's actual damages for Construction Manager's delay; however, Owner shall be entitled to exercise any other non-monetary remedies available to Owner with respect to Construction Manager's delay. Owner may deduct liquidated damages described in this Paragraph from any unpaid amounts then or thereafter due Construction Manager under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due Construction Manager shall be payable by Construction Manager to Owner at the demand of Owner. For purposes of this Paragraph the "Substantial Completion Date" shall mean the date specified in this Agreement by which Substantial Completion of the Project must occur, as such date is adjusted in accordance with the provisions of this Agreement.

#### **4.4    Progress and Completion.**

**4.4.1** All Work shall be fully completed in accordance with the requirements of the Contract Documents by the Substantial Completion Date and Final Completion Dates, as established in the approved Construction Schedule (but no later than the dates set forth in the CMR request for proposal issued by Owner) as such times may be extended by approved requests for extension of time, as provided in Paragraph 4.5 below. Within five (5) calendar days of Owner's issuance of the Notice to Proceed for the Construction Services, the Construction Manager shall submit a final Construction Schedule to Owner and the City indicating start and completion dates and the various stages of the Work, and shall show an activity network for the planning and execution of the Work. With respect to Work in the Corridors, as same is defined in the Drawings and Specifications, the Construction Manager shall complete the Corridor in each affected Concourse in a continuous manner (e.g. if Construction Contractor to commence work on the Corridor in Concourse A, Delta shall require its Construction Contractor to diligently pursue the same to completion).

**4.4.2** The Construction Manager has represented to Owner, in order to be awarded this Agreement, and hereby represents that the Construction Manager is experienced in managing construction in accordance with contract requirements and in a timely manner; that the Construction Manager is familiar with City requirements; that the Construction Manager has the requisite personnel and other resources to carefully manage this Project for completion within the stipulated time for Substantial and Final Completion; and that the Construction Manager will provide such management with care and diligence on this Project.

**4.4.3** The Construction Manager agrees to maintain the approved Construction Schedule and to meet all commencement, milestone and completion dates shown thereon, including the Substantial Completion Date and Final Completion Date, as same may be adjusted in accordance with the Contract Documents. Owner shall take such action and make such decisions as are required of it, and shall ask the City and/or the DOA to require the Architect to take such action and make such decisions required under the Contract Documents, in a timely manner. Should it appear at any time to Owner that the Construction Manager is in danger of failing to meet any of the commencement or milestone dates specified in the approved Construction Schedule, or the Substantial Completion Date or Final Completion Date, as same may be adjusted in accordance with the Contract Documents, and should this condition continue for a period of more than ten (10) days, then, upon written notice from Owner, the Construction Manager shall prepare a

recovery plan for approval by Owner which may require its employees, Subcontractors, Suppliers and all other parties covered by this Agreement to perform and work at hours and on days in addition to the normal working hours and working days, including whatever overtime or shift work is necessary to return to the original Construction Schedule. The Construction Manager shall not be compensated or reimbursed for costs resulting from the implementation of such recovery plan including overtime or shift work, except as specifically permitted by this Agreement. The Construction Manager shall perform no overtime work without Owner's prior written approval. Subject to the notice and approval provisions of this Paragraph 4.4.3, overtime costs shall only be allowed as a reimbursable Cost of the Work under Article 8 hereof to the extent such overtime work was not made necessary by any delay for which the Construction Manager is responsible.

#### **4.5    Time Extensions.**

**4.5.1** Subject to other provisions of the Contract Documents and only to the extent permitted by Paragraphs 4.5 and 4.6 hereof, the Construction Manager may be entitled to an extension of the Substantial Completion Date and Final Completion Date only for delays or hindrances which directly impact the critical path of the Construction Schedule, and result from the following unforeseeable causes, if such causes are beyond the reasonable control of the Construction Manager and are not caused by the fault, error, omission, or negligence of the Construction Manager, its employees, agents, Subcontractors, or Suppliers:

(a) Labor strikes (including strikes affecting transportation) that do, in fact, directly and critically affect the progress of the Work. In any event, labor grievances under existing agreements, representative matters, informational picketing and other labor matters shall not constitute a basis for extension of time.

(b) Acts of terrorism, the public enemy, acts of the state, federal or local government in its sovereign capacity, and acts of another contractor or consultant, their subcontractors or subconsultants, in the performance of a contract with Owner relating to the Project.

(c) Changes ordered in the Work (other than Construction Document Change Orders), provided that Change Orders are properly authorized and approved under the provisions of the Contract Documents.

(d) Any negligence, breach, or omission by Owner or any act of Owner specifically authorizing and approving the delay (including Owner's failure to provide the Construction Manager with access to the site of the Work in accordance with Owner-approved Construction Schedule, as it may be revised with Owner's approval during the course of the Work).

(e) Acts of God, tornado, fire, hurricane, blizzard, earthquake, typhoon, or flood that affect Work to be performed or damage completed Work or stored materials.

(f) The encountering of Hazardous Materials in concentrations or locations which differ from those assumed and agreed upon by Owner and the Construction Manager in reliance upon the information referenced in Paragraph 9.5.1 of the General Conditions.

**4.5.2** Notwithstanding anything contained herein to the contrary, the Construction Manager agrees that it shall not be entitled to any extension of time or additional costs due to ordinary inclement weather. The time for performance of this Agreement includes an allowance for days which, according to historical data, may not be suitable for construction work. The Construction Manager shall consider in its planning and scheduling of the Work the range of seasonal weather conditions historically experienced in the Atlanta, Georgia area. Delays or temporary inability to perform work as a result of a high or low temperatures and/or precipitation, where such conditions are consistent with the typical range of climatic conditions in the area, will not be considered as a basis for an extension of time. The Construction Manager may be entitled to an extension of time for Work which is actually delayed due to unusually severe inclement weather, as determined by the relevant historical data, but only to the extent permitted by this Paragraph 4.5 and only to the extent such delay directly impacts the critical path of the Construction Schedule.

**4.5.3** In the event the Construction Manager requests an extension of time, the Construction Manager shall furnish appropriate justification and supporting evidence necessary for a determination as to whether the Construction Manager is entitled to an extension of time under the provisions of this Agreement. If the Construction Manager is entitled to any extension of time, the total number of days' extension shall be based upon the approved Construction Schedule and on all data relevant to the extension. The Construction Manager acknowledges and agrees that actual delays in activities which, according to the Construction Schedule, do not affect the critical path of the Construction Schedule or the Substantial Completion Date or Final Completion Date will not be the basis for an extension of time. If the Construction Manager is entitled to an extension of time, an appropriate Change Order will be issued in accordance with Article 8 hereof.

**4.5.4** For any delay or hindrance for which the Construction Manager intends to seek an extension of time or time-related costs where allowed by Paragraph 4.6 hereof, the Construction Manager shall give initial written notice to Owner within seven (7) days of the first occurrence of the delay or hindrance or the Construction Manager's first knowledge of same, whichever is later, otherwise all such claims shall be waived by the Construction Manager. The Construction Manager shall provide a written estimate of the probable effect of such delay or hindrance on both the costs and schedule for the Work, including the specific categories of costs (separated by trade) the Construction Manager anticipates incurring as a result of the delay or hindrance to Owner within twenty-one (21) days of the first occurrence of delay or hindrance or the Construction Manager's first knowledge of same, whichever is later, otherwise, all such claims shall be waived by the Construction Manager. In making a claim for an extension of time and/or time-related costs as a result of a delay or hindrance, the Construction Manager shall submit its final claim within forty-five (45) days of the cure or termination of the delay or hindrance event, whichever is later, otherwise, the claim shall be waived by the Construction Manager.

**4.5.5** To the extent a delay is caused by events for which the Construction Manager and Owner have joint or concurrent responsibility, the extension of time and/or time-related costs allowed by other provisions of this Agreement shall be limited to that portion of the delay not caused by

the default, neglect, or inefficiency of the Construction Manager or any of the Construction Manager's Subcontractors or Suppliers or those for whom they are responsible.

**4.5.6** The Construction Manager recognizes that the site of the Work is located at the Airport, which shall remain open for regular business during the performance of the Work. The Construction Manager shall plan and execute the Work in a manner that minimizes to the greatest extent possible disruption, inconvenience, and disturbance to the occupants of facilities at the Airport and to the aforementioned operations, construction projects and traffic at the Airport.

**4.6** Limited Damages for Owner-Caused Delay. The extension of time specifically provided for in Paragraph 4.5 of this Agreement shall be the Construction Manager's sole and exclusive remedy for all delays, hindrances, or any other time-related claims, except to the extent specially allowed by this Paragraph 4.6. To the extent the Construction Manager is delayed due to the events included in Paragraph 4.5.1, or the fault or neglect of Owner, the City, the DOA, the Architect, or Owner's separate contractors and provides notice of such delay in accordance with Paragraph 4.5.4 above, the Construction Manager shall be entitled to direct costs actually incurred by the Construction Manager on account of such delay. The Construction Manager shall submit such documents as Owner or the Program Manager may reasonably require to substantiate the direct costs allowed by this paragraph. The time extension, to the extent permitted under Paragraph 4.5, shall be the Construction Manager's sole remedy for any other delay or hindrance in performance of the Work. The Construction Manager expressly agrees to waive its right to recover any delay or time-related costs except as may be specifically allowed under this Paragraph 4.6. Further, in no instance shall Owner be liable for the following categories of damages: (1) profit on the additional costs beyond those allowed elsewhere in the Contract Documents, (2) loss of anticipated profit, (3) indirect expenses, (4) home office overhead, (5) consequential damages, including without limitation, loss of bonding capacity, loss of bidding opportunities and insolvency, or (6) unless specifically authorized by statute, legal fees, claims preparation expenses, or costs of dispute resolution.

## **ARTICLE 5**

### **INITIAL GUARANTEED MAXIMUM PRICE (IGMP); ESTABLISHMENT OF FINAL GUARANTEED MAXIMUM PRICE (FGMP)**

**5.1** In consideration of the full and complete performance of the Construction Services, Owner agrees to reimburse the Construction Manager for the total Cost of the Work as defined in Article 8, plus the Construction Manager's Fee established in Paragraph 6.2, subject to the limitations stated herein. Owner and Construction Manager have agreed upon an initial guaranteed maximum price of \_\_\_\_\_ Million and No/100 Dollars (\$) (the "**Initial Guaranteed Maximum Price**" or "**IGMP**"). The Construction Manager agrees to work with Owner, Program Manager, the City and the Architect to ensure that the maximum cost to Owner for the Construction Services, including the Cost of the Work and the Construction Manager's Fee, shall not exceed the IGMP.

**5.2** Owner and the Construction Manager recognize and agree that all Drawings and Specifications are in a state ready for review by the Construction Manager but may not have

been completed as of the date of execution of this Agreement. Accordingly, the FGMP shall be established in accordance with this Article 5 of this Agreement.

**5.3** Intentionally deleted.

**5.4** The IGMP has been established on the basis of the drawings, designs, specifications and assumptions listed below (the “**IGMP Assumptions**”):

(a) All Drawings, Specifications and other documents, including all amendments thereto, which were relied upon or used to establish the IGMP.

(b) All Allowances, noting whether they cover furnish and delivery, or furnish, delivery and installation.

(c) A listing of the Assumptions and Clarifications.

(d) A Construction Schedule.

(e) A Shop Drawing Approval Schedule setting forth the schedule assumed for the Architect’s approval of Shop Drawings, which shall be consistent with Owner-approved Project Schedule.

**5.4.6** Preparation of Construction Documents for the Project

(a) The City/DOA shall cause the Architect to prepare the Construction Documents for the Project (working Drawings and Specifications) and the City and Owner shall approve the Construction Documents for the Project (working Drawings and Specifications). The Construction Manager shall provide advice to the Architect and Owner during the development of Construction Documents so they are prepared in accordance with the Construction Schedule and reflect the IGMP Assumptions, and shall recommend alternative solutions benefiting Owner by reducing construction time, saving construction costs, or enhancing the quality of the Project.

(b) Upon its and the DOA’s and/or the City’s approval of the Construction Documents for the Project, Owner, through the Program Manager, shall submit them to the Construction Manager along with a proposed Construction Document Change Order for acceptance first by Construction Manager and then by Owner for the purpose of adding such Construction Documents to this Agreement. The Construction Manager shall promptly accept or reject any such proposed Construction Document Change Order, within five (5) days of its receipt (or such longer period as reasonably required by the Construction Manager and approved by Owner to obtain feedback from potential Subcontractors). If the Construction Manager accepts the proposed Construction Document Change Order, then Owner shall likewise accept same promptly and in any event within three (3) business days of Construction Manager's acceptance.

(c) Prior to its acceptance of any Construction Document Change Order tendered under Paragraph 5.4.6(b), Construction Manager shall promptly review the Construction Documents referenced therein and shall give notice of any material variance between the Construction Documents for the Project and the IGMP Assumptions.

(d) If the Construction Manager shall determine that the Construction Documents referenced in the proposed Construction Document Change Order are inconsistent with the IGMP Assumptions, and that as a result of such variance the performance of the Work associated with the Project will increase the estimated cost amount of the IGMP, or will require an extension of the time for Substantial Completion of the Project as shown in the Construction Schedule, the Construction Manager shall reject the proposed Change Order and advise Owner, of its basis for rejection. Following consultations with the Architect, the City (if applicable) and Construction Manager, Owner shall: (i) ask the City or the DOA, as applicable, to require the Architect to revise the Construction Documents for the Project so as to make them consistent with the IGMP Assumptions (with said revisions to be completed in a reasonable time); or (ii) direct Construction Manager to proceed with the bidding of the Work associated with the Project in accordance with the proposed Construction Documents pursuant to a Construction Change Directive. In the event the Construction Manager is directed to proceed with the Work associated with the Project in accordance with the proposed Construction Documents, under (ii) above, the Construction Manager shall be paid for the Work associated with the Project as provided under Paragraph 7.6(c) and shall work with Owner to establish an adjustment to the IGMP or adjustment to the scope included in the IGMP.

**5.4.7** The IGMP shall be subject to additions and deletions by Change Order as follows:

(a) Whenever this Agreement or the General Conditions authorize an increase or decrease in the overall Project cost approved by Owner and the City (if applicable), the increase or decrease shall operate to increase or decrease the estimated cost component of the IGMP.

(b) If the Project Construction Documents prepared by the Architect are inconsistent with the IGMP Assumptions, and as specified therein, such that the performance of the Work associated with the Project would require the Construction Manager to incur actual costs in excess of the estimate for such Work associated with the Project, then the Construction Manager shall be entitled to a Change Order to increase the IGMP for all costs exceeding the estimated amount for such Project Element and its Fee on such costs due to such variances in the Construction Documents.

**5.4.8** The Date for Substantial Completion for the Project as stated in the approved Construction Schedule shall be subject to extension or acceleration as follows:

(a) Whenever this Agreement or the General Conditions authorize or provide for an extension of the Date for Substantial Completion.

(b) If the Construction Documents prepared by the Architect are inconsistent with the IGMP Assumptions, and as specified in the IGMP, and the revised documents are not submitted by the date(s) required by the current approved Construction Schedule, and the performance of

Work on the critical path of the then current approved Construction Schedule will be delayed, the Construction Manager shall be entitled to an extension of the Date for Substantial Completion of such Project Element in accordance with the other provisions of the Contract Documents.

**5.5** Development of the FGMP Change Order. Within      (    ) days (or such longer period as reasonably required by the Construction Manager and approved by Owner to assemble bid packages and obtain bids from potential Subcontractors) after the Construction Manager's receipt of Owner's Notice to Proceed with the Preconstruction Services, the Construction Manager shall submit a proposed Change Order to this Agreement (the "**FGMP Change Order**"), in the form attached hereto as Exhibit C, under which the Construction Manager shall propose to perform the Construction Services for a Final Guaranteed Maximum Price (the "**FGMP**"). The FGMP shall be the sum of (a) the Construction Manager's estimated Cost of the Work (organized by Project Element and including all trade categories, allowances, labor costs, management employee costs, and any and all other items that comprise the costs of each Project Element), (b) the Contingency (organized by Project Element) and (c) the Construction Manager's Fee (organized by Project Element).

**5.5.1** Estimated Costs. The proposed FGMP Change Order, as submitted by Construction Manager, shall include separately identified dollar amounts, stated as either fixed sums or as Allowances for each Project Element, for costs as estimated by the Construction Manager for the complete construction of the Project, and Construction Manager shall agree to perform the Construction Services for all of the Project Elements in an amount not to exceed this stated dollar amount.

**5.5.2** Fee. The proposed FGMP Change Order shall include as a separately identified item, a Fee for the Construction Manager's performance of the Construction Services, established in accordance with Paragraph 6.2. The Construction Manager's Fee amount shall include all Fees earned for Construction Services performed under this Agreement prior to the tendering of the proposed FGMP Change Order. As used in this Article 5, the term "**Fee**" means the Fee addressed in Paragraph 6.2 hereof.

**5.5.3** The Construction Manager shall include as part of the FGMP Change Order a statement identifying:

(a) All Drawings, Specifications and other documents, including all amendments thereto, which were relied upon or used by the Construction Manager in the preparation of same.

(b) All Allowances, noting whether they cover furnish and delivery, or furnish, delivery and installation and a statement of their basis.

(c) A listing of the Assumptions and Clarifications made by the Construction Manager in the preparation of the FGMP Change Order.

(d) A listing of any trade, work categories or other items which are not included in the Final Guaranteed Maximum Price.



(e) A Construction Documents Schedule setting forth the dates assumed by Construction Manager for the Architect's completion of Construction Documents, which shall be consistent with Owner-approved Construction Schedule.

(f) The Project Schedule.

(g) A Shop Drawing Approval Schedule setting forth the schedule assumed by Construction Manager for the Architect's approval of Shop Drawings, which shall be consistent with Owner-approved Construction Schedule.

The Construction Manager shall, while preparing the FGMP Change Order, confer with the Architect, the City, the Program Manager and Owner as may be required, and shall seek to obtain, prior to submission of the proposed FGMP Change Order, concurrence from Owner, the City (if applicable), the Program Manager and Architect with the items listed in (b) through (f) referenced above.

**5.5.4 Submittal of the FGMP Change Order.** The Construction Manager's proposed FGMP Change Order shall be submitted to Owner in substantially the form set forth in Exhibit C. Thereafter, Owner, the City (if applicable), the Program Manager and the Architect shall meet with the Construction Manager to review the proposed FGMP Change Order and the statement of its basis. Owner, the Program Manager and the Architect shall promptly notify the Construction Manager of any errors or omissions or necessary adjustments or modifications they discover in the presented information during their review of same. The Construction Manager shall make any necessary adjustments to the proposed FGMP Change Order as a result of any such items discovered by the Construction Manager, the Architect, the City, the Program Manager or Owner prior to its acceptance by Owner. Owner shall endeavor to accept or reject the FGMP Change Order within thirty (30) days from the receipt by Owner thereof.

**5.5.5 Acceptance or Rejection of FGMP Change Order.**

(a) If Owner accepts the Construction Manager's proposed FGMP Change Order, Owner shall give written notice of acceptance by returning the proposed FGMP Change Order to the Construction Manager with Owner's acceptance endorsed thereon and by the issuance to the Construction Manager of a Notice of Acceptance. The FGMP Change Order and the Notice of Acceptance shall constitute amendments to this Agreement.

(b) If Owner or City (if applicable) rejects the Construction Manager's proposed FGMP Change Order, the Construction Manager may, but shall not be obligated to, revise and resubmit same. In the event no FGMP Change Order can be agreed upon, the Construction Manager shall continue its performance of any other services then being performed hereunder. If the City (if applicable) or Owner does not approve the FGMP Change Order and it cannot be agreed upon, then Owner shall have the right to terminate this Agreement upon seven (7) days' written notice to Construction Manager. If Owner terminates this Agreement in accordance with this Paragraph and Construction Manager is not in default hereunder, Owner shall pay Contractor the portion of the Cost of the Work properly allocable to the portion of the Work

completed by Contractor, minus the aggregate of previous payments made by Owner to Contractor under this Agreement.

(c) Following receipt of Owner's Notice of Acceptance of the FGMP Change Order, the Construction Manager shall begin any portion of the Work if the Construction Documents for such Work have been prepared by the Architect and approved by Owner and the City and have or are thereafter added to this Agreement by Construction Document Change Order. Notwithstanding the issuance of a Notice of Acceptance, such performance (by the provision of services or labor or procurement of materials) shall not be initiated for any portion of the Work unless Construction Documents for that specific Work have been approved by Owner and added to this Agreement by Change Order.

**5.5.6** The FGMP shall be subject to additions and deletions by Change Order as follows:

(a) Whenever this Agreement or the General Conditions authorize an increase or decrease in the contract sum or contract price, the increase or decrease shall operate to increase or decrease the estimated cost component of the FGMP Change Order.

(b) If the Construction Documents prepared by the Architect are inconsistent with the Drawings, Specifications and other documents relied upon by Construction Manager in formulating the FGMP Change Order, and as specified therein, such that the performance of the Work would require the Construction Manager to incur actual costs (including delay costs, if available under the provisions of this Agreement) in excess of the estimate for such Work, then Construction Manager shall be entitled to an increase in the FGMP Change Order for all costs exceeding the estimated amount for such Work and its Fee on such costs incurred due to such variances in the Construction Documents.

(c) If the Architect shall fail to prepare Construction Documents in accordance with the Construction Documents Schedule as set forth in the FGMP Change Order, or if the Architect shall fail to approve Shop Drawings in accordance with the Shop Drawing Approval Schedule as set forth in the FGMP Change Order, the Construction Manager shall give notice of same to the Architect and to Owner, and if within five (5) business days of the issuance of the notice, the subject Construction Documents are not furnished to Construction Manager, then and in that event the FGMP Change Order shall be increased by such additional costs (including delay costs, if available under the provisions of this Agreement) as Construction Manager may reasonably incur as a result of the Architect's failure to perform.

**5.5.7** The Date for Substantial Completion of the Project as stated in the FGMP Change Order shall be subject to extension or acceleration whenever this Agreement or the General Conditions authorize or provide for an extension of the Date for Substantial Completion.

**5.6** Owner shall receive as its share of any savings a sum equal to 100% of the amount by which the reimbursable Cost of the Work, plus the Construction Manager's Fee, is less than the Final Guaranteed Maximum Price.

5.7 In the event that Cost of the Work plus the Construction Manager's Fee is greater than the Final Guaranteed Maximum Price (as adjusted as provided for in this Agreement), then the Construction Manager shall pay such excess amount without any claim against Owner.

## **ARTICLE 6**

### **CONSTRUCTION MANAGER'S COMPENSATION FOR PRECONSTRUCTION SERVICES; CONSTRUCTION MANAGER'S FEE**

6.1 Construction Manager's Compensation for Preconstruction Services. In consideration of the performance of the Preconstruction Services, Owner shall pay the Construction Manager the not-to-exceed sum of        Dollars (NTE \$        ), according to the staffing plan and all-inclusive billing rates shown on Exhibit G. Owner shall pay no other amounts for the Preconstruction Services.

6.2 Construction Manager's Fee. In consideration of the performance of the Construction Services, Owner agrees to pay the Construction Manager, in current funds, the Construction Manager's Fee as follows: \_\_\_\_\_.

6.3 Changes in Work. For Changes (as defined below), Construction Manager's Fee shall be adjusted as follows: \_\_\_\_\_.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

7.1 Owner-Directed Changes in the Work. Without invalidating this Agreement or any bond issued hereunder, at any time or from time-to-time during the progress of the Work, and without notice to the Construction Manager's sureties, Owner may, by Change Order, or by Construction Change Directive, authorize or order changes in the Work or Project Elements within the general scope of the Agreement or any of the Contract Documents consisting of additions or alternatives to, or deductions or deviations from, or substitutions in the Work (hereinafter referred to as a "Change" or "Changes"). All Changes in the Work shall be authorized only by a Change Order or Construction Change Directive and, when appropriate, the IGMP, the FGMP or the Construction Schedule being adjusted accordingly and pursuant to the requirements of this Article 7. In addition, in the event of any change to any federal, state or local law, statute, order, rule, code, regulation or ordinance not in force at the time of the submission of the IGMP or FGMP hereunder, or later coming into force provided that the Construction Manager did not have reasonable knowledge of such change by publication or otherwise at the time of the submission of any the IGMP or FGMP hereunder, and such change will cause an increase in the time or cost required for the Work, the Construction Manager shall be entitled to an adjustment to the applicable IGMP or FGMP and the Construction Schedule made necessary by such change.

7.2 Limits on Compensation for Changes. The percentages and elements of cost set forth in Paragraph 7.6 of this Agreement shall constitute the maximum amounts to which the Construction Manager shall be entitled for Changes and shall be the sole and only adjustment

therefor. No other percentages or elements of cost shall be allowed, and the Construction Manager shall have no right to compensation or damages for loss of profits, overhead, impact damages, consequential damages, or any other loss or cost arising out of Changes, nor any claim or cause of action therefor, except as expressly provided in Paragraphs 7.5 and 7.6 of this Agreement.

**7.3** Adjustment of Bond Amounts for Changes. It is the Construction Manager's responsibility to (and to require its Subcontractors to) notify any surety or sureties of any Changes greater than ten percent (10%) of any applicable portion of any scope of Work or as otherwise required by the terms of any applicable bonds provided pursuant to this Agreement, and to ensure that the amount of the applicable bonds (or insurance) are adjusted accordingly, unless directed otherwise by Owner in writing. The Construction Manager shall furnish proof of any necessary adjustments to Owner promptly after receipt of the executed Change Order or Construction Change Directive and the cost of the additional bond premium shall be included as a reimbursable Cost of the Work.

**7.4** Written Authorization Required.

**7.4.1** Changes in the Work, the IGMP, the FGMP for the entire Work, or the Construction Schedule shall be made only by Change Order or Construction Change Directive specifying in writing what Changes are to be made. The Construction Manager shall not commence any Change in the Work until an appropriate Change Order has been signed and issued by Owner (and if necessary, approved by the City) and signed by the Construction Manager, or Owner has issued a written Construction Change Directive on a form substantially similar to an AIA Document G714 (2001 edition). Any additional work performed or undertaken by the Construction Manager without an appropriate Change Order or Construction Change Directive will not entitle it to any increase in the IGMP, FGMP, additional compensation, or to any extension of time or the Construction Schedule. Notwithstanding any provisions contained herein to the contrary, the Construction Manager, in the case of an emergency immediately affecting the safety of persons or property, without authorization from Owner, may act at its discretion to prevent injury or damage, and the Construction Manager shall so act if instructed to do so by Owner. Any compensation claimed by the Construction Manager for actions necessitated by the emergency shall be determined in the manner provided for herein, except that the failure of the Construction Manager to obtain a written Change Order or Construction Change Directive prior to the performance of such emergency work shall not affect its right, if any, to extra compensation.

**7.4.2** Except for written Change Orders or Construction Change Directives, no order, statement or conduct of Owner shall be treated as a Change or entitle the Construction Manager to any increase in compensation or time. The Construction Manager hereby agrees that it will not make or seek to make any claim for additional compensation against Owner for any Work performed by the Construction Manager, or its Subcontractors or Suppliers, which was not directed and authorized in advance of commencement of performance of such Work by a formal written Change Order signed by Owner or by a Construction Change Directive signed by Owner.

## **7.5     Proposal Letters.**

**7.5.1** Prior to the issuance of a Change Order to adjust the IGMP or the approved FGMP, the Construction Manager shall submit a Proposal Letter as required by the Procedures Manual to Owner, the Program Manager, and the Architect. All Change Order work shall be performed in accordance with this Agreement, and each Change Order shall be in the form prescribed by the Procedures Manual. Each Proposal Letter submitted by the Construction Manager shall include the Construction Manager's proposed Change Order Amount, as specified in Paragraph 7.6 hereof, and the estimate of time to be deleted from or added to the Construction Schedule, if any, and be broken down by Subcontractor or Supplier, or scope of work or detail, and be in such reasonable detail that Owner, the Program Manager, and the Architect can fully assess the impact of the proposed Change upon the costs and time allocated for the Work. If the Proposal Letter is acceptable to Owner, it shall direct the Program Manager to prepare and submit for its execution a Change Order for the Work, in compliance with the requirements of Paragraph 7.1.

**7.5.2** If the Construction Manager's Proposal Letter pursuant to Paragraph 7.5.1 is not acceptable to Owner because Owner determines that the Work referenced by the proposal is not a Change, no Change Order or Construction Change Directive shall be issued or signed, and the Construction Manager shall proceed with the Work and shall reserve its right to make a claim for the alleged additional reimbursable Cost of the Work plus its proportional Fee on same.

**7.5.3** If the Construction Manager's Proposal Letter pursuant to Paragraph 7.5.1 is not acceptable to Owner because Owner determines that the amount of the proposed adjustment to the IGMP, or the FGMP, or the time requirements specified by the Construction Schedule, is unacceptable, a Construction Change Directive in a form substantially similar to an AIA Document G714 (2001 edition) shall be issued by Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the IGMP, the FGMP, or in the time requirements specified by the Construction Schedule. Upon receipt of a Construction Change Directive, the Construction Manager shall promptly proceed with the Change in the Work involved and advise, in writing, Owner, the Program Manager, and the Architect, of the Construction Manager's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustments in the IGMP or the FGMP, or in the time periods specified in the Construction Schedule. A Construction Change Directive signed by the Construction Manager shall indicate the Construction Manager's agreement to the terms and adjustments specified in the Construction Change Directive. Such agreement shall be effective immediately and shall be recorded as a Change Order, as specified in this Article 7. If the parties are unable to reach agreement under the procedure set forth above, a Change Order shall be issued and signed by Owner and signed by the Construction Manager which shall adjust the Agreement as follows:

(i) for Changes resulting in a cost or credit to Owner, the IGMP and/or the FGMP shall be increased or reduced, as the case may be, as provided for in Paragraph 7.6 hereof; and

(ii) for Changes which affect the time of performance by the Construction Manager of the Work, the time requirements specified in the Construction Schedule

shall be increased or reduced, as the case may be, by the additional time or lesser time reasonably required, in accordance with Paragraph 4.5.3.

**7.5.4** As set forth in Paragraph 4.6 of this Agreement, and in accordance therewith, any increase in the IGMP or the FGMP whatsoever as a result of actual or alleged delays, hindrances, accelerations or other time-related costs shall be limited to those amounts properly allowed under Paragraph 4.6 hereof and shall be issued only if the terms, provisions, and procedures relating to extensions of time set forth in Article 4 of this Agreement have been satisfied and complied with.

**7.6** Change Order Amount. The cost or credit to Owner resulting from a Change in the Project shall in each instance be determined in one or more of the following ways:

(a) by mutual acceptance of a properly itemized lump sum amount or agreed adjustments to the IGMP, and/or the FGMP;

(b) by unit prices stated in the Contract Documents or subsequently agreed upon (such unit prices shall be complete and shall include all materials, equipment, labor, delivery, installation, overhead, and profit); and/or

(c) by the actual reimbursable costs (as provided in Article 8) incurred by the Construction Manager in the performance of such Work, plus the Construction Manager's Fee. For Change Order Work performed by a Subcontractor pursuant to a Change Order issued under this clause (c), each Subcontractor shall be paid based on the mark-ups for Subcontractors preapproved by Owner.

**7.7** Owner's Right To Offset Changes. Whenever it is determined that any Changes will require an increase in the time requirements specified by this Agreement or the Construction Schedule, Owner may, at its sole discretion and to the extent possible, elect to offset all or any part of such increase with other Changes, as issued pursuant to this Agreement, that will maintain the time requirements specified by the Construction Schedule. Whenever it is determined that any Changes will require an increase in the IGMP or in the FGMP, Owner may, at its sole discretion and to the extent possible, elect to offset all or any part of such increase with other Changes that will maintain the IGMP or the FGMP.

**7.8** Concealed Conditions. The Construction Manager shall provide notice to Owner and Architect as specified below in the event that the Construction Manager encounters a concealed or unknown subsurface or physical condition in the performance of the Work if such condition (1) is of an unusual nature, differs materially from those conditions ordinarily encountered and generally recognized as inherent to work of the nature provided for in this Agreement and differs materially from those conditions disclosed or indicated in the Contract Documents; or (2) has been expressly addressed in a written assumption or limitation that the parties have agreed in writing applies to the IGMP and/or the FGMP and such condition differs materially from such assumption or limitation. If the Construction Manager makes a proper claim for an adjustment to the IGMP or the FGMP, or to the time requirements specified in the Construction Schedule, regarding an unknown or concealed subsurface or physical condition which meets the

requirements listed in clauses (1) or (2) above, the Architect, the Program Manager, and Owner will promptly investigate such condition. If such condition would cause an increase or decrease in the Construction Manager's costs of performance of any part of the Work or impact the critical path of the Construction Schedule, and the Construction Manager has timely and properly made its claim, Owner will issue an appropriate Change Order or Constructive Change Directive in accordance with this Agreement. If Owner determines that the condition does not meet the requirements listed in either clause (1) or (2) above, Owner will notify the Construction Manager in writing, stating the reasons, and the Construction Manager shall proceed with the Work without any adjustment in the cost or in the Construction Schedule, but the Construction Manager shall reserve the right to make a claim for the alleged additional reimbursable Cost of the Work plus its proportional Fee on same. For any claim for an adjustment to be made properly under this paragraph, such claim must be made by the Construction Manager in writing with specific detail as to the unknown or concealed condition and such notice shall be given to Owner and the Architect promptly before conditions are disturbed and in no event later than seven (7) days after first observance of any such conditions and if the Construction Manager is entitled to an adjustment in the cost and/or time, the Construction Manager shall make such claim within an additional seven (7) days from the date of its notice to Owner and the Architect. If such claim is not timely made, it shall be considered waived. Except as provided in this Paragraph 7.8, there shall be no adjustment in cost and/or time for any unknown or concealed condition.

## **ARTICLE 8**

### **COSTS TO BE REIMBURSED AS COST OF THE WORK**

**8.1** The term "Cost of the Work" shall mean costs necessarily, actually and permitted to be incurred in the proper performance of the Construction Services under this Agreement by the Construction Manager. Such costs shall be at rates not higher than the standard paid in the locality of the Work except with prior written consent of Owner, and shall include only the items set forth below in this Article 8:

**8.1.1** Wages paid for field labor (including overtime wages as allowed by Paragraph 4.4.3 hereof) in the direct employ of the Construction Manager in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule proposed by the Construction Manager and approved in writing by Owner, and including such welfare or other benefits, if any, as may be payable with respect thereto. The welfare or other benefits as may be payable with respect to salary or wages as defined above are limited to those required by governmental regulations, by collective bargaining agreements or those specifically proposed by the Construction Manager and approved by Owner in writing and shall not include bonuses, incentive compensation or paid vacation time unless required by governmental regulations or by applicable collective bargaining agreements.

**8.1.2** Total compensation, including salaries and all fringe benefits (excluding bonuses, incentive compensation or paid vacation time), including per diems, at rates previously approved by Owner in writing, of Construction Manager's principals and personnel when stationed at the field office, and those personnel included on the Staffing Plan attached hereto as Exhibit H and located at the Construction Manager's home or branch office for the portion of their time

devoted to the performance of the Work. Principals and personnel engaged at shops or on the road, in necessarily expediting the production or transportation of materials or equipment to be incorporated in the Work, or to be utilized in the direct performance of the Work, shall be considered as stationed at the field office and their salaries paid for the portion of their time spent on the Work. Any change in total compensation of Construction Manager's personnel, whether due to changes in benefits or salaries during the time this Agreement is in force, must be approved in writing by Owner prior to Construction Manager's request for reimbursement, which approval will not be unreasonably withheld, conditioned, or delayed.

**8.1.3** Cost of contributions, assessment or taxes incurred during the performance of the Work for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Construction Manager and included in the Cost of the Work under Paragraphs 8.1.1 and 8.1.2. Such costs shall be limited to those required by applicable federal, state or local laws and regulations. The Construction Manager's payroll documentation shall include a separate breakout of such costs, including the maximum required payment and year-to-date payment with respect to each employee.

**8.1.4** The proportion of reasonable transportation and subsistence expenses incurred in discharge of duties directly connected and related to the performance of the Work, including meals and lodging, of the Construction Manager, its officers and employees other than those stationed at the field office, and of those certain Construction Manager personnel, officers or employees stationed at the field office as approved by Owner in writing; provided, however, that all such costs must be in accordance with Owner's Travel Reimbursement Policy attached hereto as Exhibit E.

**8.1.5** If preapproved by Owner, costs of local parking lot leases for parking for the Construction Manager's employees and those of its Subcontractors and shuttle bus service from local parking lots and local public transportation stations to transport the Construction Manager's employees and those of its Subcontractors to the site of the Work; however, Construction Manager shall use commercially reasonable efforts to minimize such costs.

**8.1.6** Cost of materials, supplies and equipment incorporated in the Work, including costs of transportation thereof. Expendable/consumable tools and equipment (blades, bits, fasteners, drop cords, etc.) may be considered to be reimbursable if approved by Owner, subject to a pre-negotiated limit.

**8.1.7** Payments made by the Construction Manager to Subcontractors and consultants for their portion of the Work performed pursuant to subcontracts under this Agreement.

**8.1.8** Rental charges of all necessary machinery and equipment, exclusive of hand tools, used on the site of the Work, whether rented from the Construction Manager or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, at rental charges consistent with those prevailing in the area for the period of time when such machinery and equipment are required and used in the performance of the Work. The phrase "minor repairs and replacements" above is limited to repairs and parts replacements to maintain the item of machinery or equipment in an operable condition and does not include



major repair/overhaul to restore machinery or equipment to a nearly new condition. For each item of machinery or equipment known to have a value in excess of \$100,000, the Construction Manager and Owner shall jointly evaluate the anticipated total rental charge for each such item of machinery and equipment based on an agreed-to appraisal value, and should the anticipated total rental charge for the duration of the Work equal 75% or more of the purchase value or the appraisal value of the equipment, Owner reserves the right to approve the purchase of the equipment (or equivalent) for use in the performance of the Work, and at completion of the Work the fair market salvage value or actual sale value will be credited to the Cost of the Work.

**8.1.9** Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which were purchased for the performance of the Work.

**8.1.10** The proportionate cost attributable to the Work for premiums of all bonds and insurance which the Construction Manager is required by the Contract Documents to purchase and maintain, including but not limited to Performance, Labor/Material Payment and Statutory Lien Bonds.

**8.1.11** Sales, use or similar taxes related to the Work and for which the Construction Manager is liable, as imposed by any applicable governmental authority, as allowed by Paragraph 4.6.1 of the General Conditions.

**8.1.12** Permit fees and royalties.

**8.1.13** (a) Damages for infringement of patents and (b) costs of defending suits therefor (where allowed by Paragraph 4.15.1 of the General Conditions), and (c) deposits lost for causes other than the fault or negligence of the Construction Manager, any Subcontractor, any of their suppliers, anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable. However, no such losses, costs and expenses shall be included in the Cost of the Work for the purpose of determining the Construction Manager's Fee or included the IGMP or FGMP.

**8.1.14** Losses and expenses, not compensated by insurance or otherwise, sustained by the Construction Manager in connection with the Work, provided they have resulted from causes other than the fault or neglect of the Construction Manager, any Subcontractor, any of their suppliers, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Claims for such losses must be filed in writing to Owner within twenty-one (21) days of occurrence to be considered. Such losses shall include settlements made with the written consent and approval of Owner and such approval shall not be unreasonably withheld. No such losses and expenses shall be included in the Cost of the Work for the purpose of determining the Construction Manager's Fee. If, however, such loss requires reconstruction and the Construction Manager is placed in charge thereof, the Construction Manager shall be paid a fee mutually agreeable to Owner and the Construction Manager.

**8.1.15** Minor expenses such as telegrams, long distance telephone calls, Project related telephone services, and postage and delivery services in connection with the Work at the site of the Work.

**8.1.16** Subject to the prior approval of Owner, field office expenses such as office equipment (copiers/fax/printers); utilities; office supplies; printing, copying, photography and reprographic services; safety clothing required by applicable law such as hard hats, vests, etc.; MIS charges and IT set-up; on-site cell phones, radios and other communications equipment.

**8.1.17** Cost of removal of all debris.

**8.1.18** Costs incurred due to an emergency affecting the safety of persons and property.

**8.1.19** Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.

**8.1.20** Costs of storage for all materials and equipment necessary for the performance of the Work.

**8.1.21** Costs of temporary provisions and structures necessary for the performance of the Work.

**8.1.22** Costs of background checks, drug testing and other screening for the Construction Manager's employees stationed at the site of the Work as required to comply with Article 16 of the General Conditions and any City requirements.

**8.1.23** Document storage and retrieval costs, including those costs incurred by the Construction Manager in complying with its obligations under Article 11 hereof.

**8.1.24** Notwithstanding the inclusion of the specific cost items contained in this Article 8, said items shall not be included as a part of the Cost of the Work to the extent that the cost of such items, together with the Construction Manager's Fee, exceed the Final Guaranteed Maximum Price.

## **ARTICLE 9**

### **COSTS NOT TO BE REIMBURSED**

**9.1** The term Cost of the Work shall not include any of the items set forth below in this Paragraph 9.1:

**9.1.1** To the extent not allowed by Paragraph 8.1.2 hereof, salaries or other compensation of the Construction Manager's principals, officers, and personnel at the Construction Manager's home office, branch offices, and field offices other than the field office for the Work under this Agreement.

**9.1.2** Expenses of the Construction Manager's home and branch offices other than the field office for the Work under this Agreement.

**9.1.3** Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work under this Agreement.

**9.1.4** Overhead or general expenses of any kind, except as may be expressly included in Article 8.

**9.1.5** Costs due to the negligent conduct of, or failure to comply with the Contract Documents by, the Construction Manager, any Subcontractor, any Supplier, any of their subcontractors or suppliers, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective or nonconforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to persons or property.

**9.1.6** The cost of any item not specifically and expressly included in the items described in Article 8.

**9.1.7** Costs in excess of the IGMP or the Final Guaranteed Maximum Price, as adjusted pursuant to the Contract Documents.

**9.1.8** Cost of any entertainment incurred by the Construction Manager.

**9.1.9** Costs of replacing lost or stolen hand tools.

**9.1.10** Fines or lost discounts to the extent due to the fault or negligent acts or omissions of the Construction Manager, its Subcontractors, or Suppliers.

**9.1.11** Secretarial, clerical, or accounting support for personnel not stationed at the Project site or not expressly allowed under Article 8.

**9.1.12** Non Project-specific business licenses or similar fees.

**9.1.13** To the extent not allowed by Paragraph 8.1.2 hereof, project management labor and all related fees for personnel not stationed at the Site of the Work.

**9.1.14** All overhead and profit, including home office management and support.

**9.1.15** Except as permitted by Paragraph 8.1.4, local travel costs and local relocation expenses.

**9.1.16** Cost or expenses associated with the actual performance of corrective or repair work under any warranties or guarantees required by the Contract Documents.

**9.1.17** Cost or expenses associated with or incurred in connection with performance of the Preconstruction Services.

**ARTICLE 10**  
**PAYMENTS TO THE CONSTRUCTION MANAGER**

**10.1 Interim Payments to the Construction Manager.**

**10.1.1** On or before the twenty-fifth (25th) day of each month, the Construction Manager shall prepare and submit to Owner and the Program Manager an Application for Payment seeking reimbursement for the reimbursable Cost of the Work incurred in connection with the Work performed since the preceding pay period. Each Application for Payment shall be on a form or forms approved in advance by Owner and shall be broken down by Project Elements. The Construction Manager may seek in its Application that portion of its Fee earned during the pay period, calculated on costs incurred in connection with the Work since the preceding pay period. With Owner's advance written approval, the Construction Manager may request payment for materials stored off-site if the request is accompanied by a bill of sale transferring title to such materials to Owner upon receipt of payment for same. The Construction Manager's Applications shall be accompanied by applications for payment submitted to the Construction Manager by its Subcontractors, by invoices from its Suppliers, and by a detailed invoice from the Construction Manager for all self-performed Work. Each such Application shall be supported by such documentation and detailed information as may be reasonably required by Owner to substantiate the validity of the Costs and Fee amounts requested. Owner may withhold payment for any item or items contained in any Application for Payment until and unless appropriate documentation and details supporting each item are submitted.

**10.1.2** Each Application shall also be accompanied by certified payroll records for the compensation paid by the Construction Manager to its own non-salaried labor forces and those of its Subcontractors reimbursable under Article 8, accompanied by a listing of all personnel for which payment is sought, the wages or salary amount owed each individual, the taxes, insurance and worker's compensation payable on account of each individual, and time sheets of each such person working on the Project. A written schedule shall also be submitted setting forth the quantities and costs of all other items for which payment is requested.

**10.1.3** The Construction Manager shall also furnish with each Application for Payment affidavits and lien waivers executed by the Construction Manager and by each Subcontractor and Supplier in customary forms acceptable to Owner with respect to the Work covered by the Application for Payment.

**10.1.4** Each Application for Payment submitted by the Construction Manager shall contain the percentage of completion of each item included in the Project Element Schedule of Values as of the date of the Application.

**10.1.5** Applications for Payment by the Construction Manager under this Article 10 shall be on an AIA Document G702 and G703 and shall include all information specified by this Article 10 and required by Owner or the City.

**10.1.6** No later than ten (10) days after Owner's receipt of funds from the City reimbursing Owner for the costs of a properly completed Application for Payment meeting the requirements

of this Agreement, and to the extent Owner and City have approved the Application, Owner shall pay to the Construction Manager the undisputed, reimbursable Cost of the Work properly incurred by the Construction Manager during the period in question, plus the Fee due on same, as herein provided, less retainage as provided in Paragraph 10.2. Owner shall endeavor to make such payments to Contractor in a timely manner. All Applications for Payment shall be subject to adjustment on account of any prior overpayments. Owner may withhold payment on account of any ground which permits the withholding of payments under Paragraph 10.4 of this Agreement, or as otherwise permitted by law.

## **10.2 Retainage on Interim Payments.**

**10.2.1 Retainage on Cost of the Work for Work Performed by Subcontractors.** Ten percent (10%) of the amounts due to the Construction Manager under approved and verified Applications for Payment for the Cost of the Work not covered under Paragraph 10.2.2 and payable to the Construction Manager's Subcontractors shall be held by Owner hereunder as retainage until fifty percent (50%) of the Project has been completed, and fifty percent (50%) completion shall mean the point at which fifty percent (50%) of the total amount of the FGMP has been reimbursed by the City. After fifty percent (50%) completion, five percent (5%) of the amounts due to the Construction Manager under approved and verified Applications for Payment for the Cost of the Work not covered under Paragraph 10.2.2 and payable to the Construction Manager's Subcontractors shall be held by Owner hereunder as retainage until Final Completion of the Project Element or entire Project. If, prior to Final Completion of the Project, Owner determines that the manner of completion and progress of the Work associated with a certain Project Element performed by the Construction Manager is reasonably satisfactory and the City approves, it shall reduce the amount of retainage being held. The Construction Manager may also request a release of monies held in retainage so that the Construction Manager may make final payment to a Subcontractor where all work to be performed by that Subcontractor is completed and has been accepted by Owner. Such a request must be accompanied by a final application for payment from the Subcontractor, and all documents required for Final Completion under Paragraph 8.4 of the General Conditions. In any event, Owner shall be entitled to retain an amount it deems necessary to protect its interests until Final Completion of a Project Element or the entire Project, at which time it may release any excess amount to the Construction Manager.

**10.2.2 Retainage on the Construction Manager's Fee.** The Construction Manager shall be paid ninety percent (90%) of the proportional amount of its Fee on the reimbursable Cost of the Work, approved in each Application for Payment with each progress payment.

**10.2.3** Except for retainage applicable to Subcontracts that have been completed and for which Owner has made final payment, notwithstanding Paragraph 10.2.1, Owner may reinstate retainage at any time if the Work on the entire Project is unsatisfactory as a whole or as a whole falls behind the time stated for the completion in the Construction Schedule.

**10.3 Payment Upon Final Completion.** Upon the Architect's issuance of a Certificate of Final Completion for the Work, or designated portion thereof, and the determination by Owner that the Construction Manager has reached Final Completion, Owner shall within ten (10) days after

Owner's receipt of funds from the City reimbursing Owner for the costs of a properly completed Application for Payment meeting the requirements of this Agreement (including but not limited to properly executed affidavits and lien waivers from the Construction Manager and all Subcontractors and Suppliers in customary forms acceptable to Owner and the fulfillment of all conditions required by Paragraph 8.4 of the General Conditions) pay to the Construction Manager an amount (including any retained amounts) equal to the sum of (i) the entire unpaid balance due Subcontractors for Work performed by the Subcontractors, (ii) the unpaid balance owed the Construction Manager as reimbursable Costs of the Work, and (iii) the unpaid balance owed the Construction Manager for its Fee on same. Notwithstanding the foregoing, Owner may withhold any amounts otherwise payable under this Paragraph 10.3 if grounds for such withholding under any provision of this Agreement then exist. The Construction Manager waives all rights to seek reimbursement for any costs incurred as of the date the request for final payment is submitted if proper documentation of such costs cannot be obtained or does not exist.

**10.4 No Obligation Under Subcontracts.** This Agreement does not create any contractual relationship between Owner and any Subcontractor or Supplier under contract with the Construction Manager, or any duty by Owner to any such Subcontractor or Supplier. Owner shall have no obligation to pay or to see that payment of money owed to Subcontractor or Suppliers is made by the Construction Manager.

**10.5 Payments Withheld.** In addition to other grounds set forth in this Agreement, Owner may withhold the whole or a part of any payment due the Construction Manager to such extent necessary to protect Owner from loss on account of any of the following circumstances (regardless of when discovered):

**10.5.1** Defective work not remedied.

**10.5.2** Claims filed.

**10.5.3** Failure of the Construction Manager to make payments when due and owing to Subcontractors or Suppliers.

**10.5.4** Substantial evidence that the Work or any Project Element thereof cannot be completed for the balance then unpaid under the IGMP or the FGMP.

**10.5.5** Damage caused by the Construction Manager, its Subcontractors, or suppliers to another contractor or to any third party.

**10.5.6** Persistent failure to maintain a rate of progress in accordance with the Construction Schedule.

**10.5.7** Persistent failure to supply enough skilled workmen or proper materials.

**10.5.8** Any material breach of this Agreement.

**10.5.9** Any material failure to perform hereunder.

**10.5.10** Any material failure to provide information required to be provided by the Construction Manager to Owner.

When the above grounds are removed, payment shall be made for amounts withheld because of them. No omission on the part of Owner to exercise the aforesaid option shall be construed to be a waiver of any breach or acquiescence therein, and Owner may exercise its option from time to time and as often as may be necessary.

**10.6** No Waiver by Owner. By paying the Construction Manager's Applications for Payment, or by making any other payments to the Construction Manager (including the final payment of retainage), Owner shall not thereby be deemed to have examined, inspected, or reviewed in any way the quality or quantity of the Work, or to have reviewed the construction means, methods, techniques, sequences or procedures, or to have made any examination to ascertain how or for what purpose the Construction Manager has used the monies previously paid. No payment of any the Construction Manager's Applications (including the final payment of retainage), nor any determination by Owner of Substantial Completion or Final Completion, nor any partial or entire use or occupancy of the Work by Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

**10.7** Transfer of Title. The Construction Manager warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to Owner or the City, as applicable, upon the receipt of payment by the Construction Manager for amounts properly due under the Contract Documents, free and clear of all liens, claims, security interests or encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Construction Manager, or by any other person performing work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Construction Manager or such other person.

**10.8** Overpayments. If Owner shall determine, by audit or otherwise, that it has made an overpayment to the Construction Manager and thereafter makes written demand for repayment thereof, the Construction Manager shall, within thirty (30) days of receipt of such written demand for repayment, tender the amount of such overpayment to Owner or otherwise resolve the demand for repayment to Owner's satisfaction. If the Construction Manager fails to comply with or otherwise resolve to Owner's satisfaction any demand for repayment made pursuant to this Paragraph 10.8 within forty-five (45) days of receipt thereof, the amount of such overpayment demanded shall thereafter bear interest at the prime rate in effect as of the date the overpayment is demanded, until paid in full.

**10.9** No Payments in Advance. Construction Manager may make application for payment to Owner for Work in place and materials and equipment incorporated in the Work, at intervals of not more than once a month. No payment will be made for Work in advance of completion or prior to performance, with the exception of amounts incurred for materials and equipment not incorporated in the Work but delivered and stored at the Airport in a commercially reasonable manner at the Airport or at an off-Airport bonded warehouse as contemplated above.

## **ARTICLE 11**

### **ACCOUNTING RECORDS**

**11.1**      Records; Audits. The Construction Manager shall oversee the receipt of all materials, the use of all equipment, and the performance of all labor entering into the performance of the Work; shall retain all invoices, checks and other records showing billing and payment for materials, equipment and labor going into the performance of the Work; shall maintain books of account with respect to the performance of the Work; and shall require its Subcontractors and Suppliers to maintain similar records. Furthermore, the Construction Manager shall, at reasonable times and upon request at any time during the progress of the Work (and for a period of five (5) years following Final Completion or such longer period required by applicable law), afford Owner and the City access to the aforesaid books and records of account, wherever located, as they relate to the Work and the cost thereof for such examination and audit by Owner, the City or by their designated representatives as Owner or the City may elect. Such right of access, examination and audit includes the right to obtain access to and to examine and audit the Construction Manager's home office records relating to the Work. Owner may make copies of any records which Owner has the rights to access, examine, and audit. Approval of an Application for Payment by Owner shall not foreclose the right of Owner to examine the books and records to determine the correctness and accuracy of any item. The Construction Manager's records for the work performed pursuant to this Agreement shall include such details and information as may be needed to allocate the amounts invoiced to Owner among the various funding sources for the Project in accordance with procedures established by Owner. The Construction Manager's invoices to Owner shall show such allocations and level of detail and backup reasonably required by Owner. In addition, Construction Manager shall comply with all audit and recordkeeping requirements of the City. If the audit shows that Construction Manager was paid for amounts to which it is not entitled, Construction Manager shall refund such amounts to Owner. The provisions of this Section shall survive a termination or expiration of this Agreement.

## **ARTICLE 12**

### **MISCELLANEOUS PROVISIONS**

**12.1**      Terms used in this Agreement which are defined in other Contract Documents and are not defined in this Agreement shall have the meanings designated in those Contract Documents.

**12.2**      If for any reason all or part of any provision contained in this Agreement or any other Contract Document is determined judicially to be invalid, void or unenforceable, it shall not affect the validity or enforceability of any other terms and conditions contained herein, and said remaining terms and conditions shall continue in full force and effect to the extent applicable.

**12.3**      The Construction Manager acknowledges that Owner desires to obtain the benefit of all cash and trade discounts available in connection with the Work. The Construction Manager shall advise Owner of the availability of cash discounts on a timely basis and, provided Owner deposits funds with the Construction Manager on a timely basis with which to make payments to obtain such cash discounts, such cash discounts shall be obtained and shall reduce the Cost of the



Work. All trade discounts, rebates, and refunds all returns from sale of surplus materials, tools, and equipment shall accrue to Owner, and the Construction Manager shall make provisions so that they can be secured. Amounts which accrue to Owner shall be credited to Owner as a reduction to the Cost of the Work.

**12.4** To the extent the Project or any portion of the Work qualifies for tax-exempt status or for tax incentives, and if Owner furnishes the Construction Manager necessary and appropriate documentation therefor, then the Construction Manager shall take all steps necessary to secure tax savings on all labor and material purchased for the Work. All such savings shall revert solely to Owner.

**12.5** The Construction Manager's communications with Owner with respect to the Work shall be made through the Program Manager unless otherwise requested by Owner.

**12.6** The Construction Manager shall follow the guidelines and requirements established in the Procedures Manual, Delta's Environmental Procedures Manual, the Project Quality Assurance Manual, and the Project Safety Manual, to the extent applicable to the performance of the Work. The Project Quality Assurance Manual and the Project Safety Manual shall be owned by Owner and shall be relinquished to Owner at termination or completion of this Agreement.

**12.7** This Agreement shall be governed by the law of the State of Georgia, without giving effect to the conflict of law provisions therein which will lead to the application of the law of another jurisdiction.

**12.8** Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third-party against either Owner or the Construction Manager, except as provided in Article 13 of this Agreement and Paragraphs 4.16.1 and 6.2.6 of the General Conditions.

**12.9** Owner and the Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement.

**12.10 Confidential Information.** "Confidential Information" shall mean all information that Owner discloses to the Construction Manager and identifies in writing to the Construction Manager as confidential, as well as the work product and other information relating to same resulting from the Construction Manager's Work, including without limitation, the Construction Manager's evaluations and reports, Owner's responses to the Construction Manager's evaluations and reports, cost information, the extent and nature of the Project contemplated by Owner, and all drafts and associated materials; but not including information that rightly becomes public, or that the Construction Manager otherwise knows or otherwise receives without obligation of confidence. For a period of three (3) years from the date of disclosure, the Construction Manager agrees to hold all Confidential Information in trust and confidence for Owner and agrees not to disclose Confidential Information, by publication or otherwise, to any person other than to the Construction Manager's Subcontractors, employees, Owner, the

Program Manager, or any authority having jurisdiction over the Project, or to third-parties having a need to know and whom Owner agrees in writing may receive such information; provided that, prior to such disclosure to third-parties, the Construction Manager shall obtain non-disclosure agreements from such persons and firms. If any medium containing Confidential Information is lost by the Construction Manager, the Construction Manager shall promptly notify Owner. Upon expiration or early termination of this Agreement, at the written request of Owner, the Construction Manager shall return to Owner all written or descriptive matter, in any form, which contains Confidential Information, except that the Construction Manager can retain one (1) copy of such documents or things for its records. The Construction Manager may produce Confidential Information to the extent required by (i) court order, (ii) order of governmental authority, or (iii) proper written demand in connection with any arbitration or litigation; provided, that in such event, the Construction Manager shall give prompt notice to Owner so that Owner can seek a protective order or other protection from disclosure.

**12.11** Without Owner's prior written approval, the Construction Manager shall have no right to use the trademark or tradename of Owner or any of Owner's affiliated companies or subsidiaries.

**12.12** No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any breach of or failure to comply with any of the covenants, conditions, or agreements hereof to be performed by either party shall not be construed to be a waiver of any subsequent breach thereof or failure to comply therewith, or of any breach of, or failure to comply with any other covenant, condition, or agreement contained herein. Owner's review, approval, acceptance of or payment for services under this Agreement shall not operate as a waiver of any rights under this Agreement, and the Construction Manager shall be and shall remain liable to Owner for all of its obligations hereunder and for all damages incurred by Owner as the result of the Construction Manager's failure to perform in conformance with the terms and conditions of this Agreement. The rights and remedies provided for under this Agreement are in addition to any other rights or remedies provided by law. Owner or the Construction Manager may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of this Agreement.

**12.13** Any and all reviews or approvals by Owner or its Program Manager which are required by or referenced in this Agreement or the Contract Documents or are otherwise undertaken by Owner or its Program Manager in connection with the Work are for the sole purpose of concept review only. Any such reviews, approvals, or related actions by Owner or its Program Manager shall not be, or be deemed, an indication or representation of any knowledge or expertise by Owner or its Program Manager in any area of the services provided by the Construction Manager hereunder and shall not be construed to create any right on behalf of or otherwise affect the obligation of the Construction Manager.

**12.14** No member, director, officer, joint venturer, beneficiary, volunteer participant, employee, consultant, agent, or representative of Owner shall be personally liable to the Construction Manager under any term or provision of this Agreement for Owner's payment obligations or

otherwise, or because of any breach hereof, the Construction Manager agreeing to look solely to the assets of Owner for the satisfaction of any liability of Owner hereunder. In no event shall Owner be liable to the Construction Manager except for payment for services rendered pursuant to and in accordance with this Agreement, nor shall Owner ever be liable to the Construction Manager for indirect, incidental, special, or consequential damages except as expressly provided herein. No director, officer, or employee of the Construction Manager shall be personally liable to Owner under any term or provision of this Agreement for the Construction Manager's obligations hereunder or because of any breach hereof.

**12.15** The Construction Manager at all times shall use all reasonable efforts to mitigate the effect of noise, dust, vibration and construction activities in regards to operation of areas in use by the City, Owner or other Airport tenants. The Construction Manager shall install all code-required utilities and equipment for safety, ease of entrance and egress for traveling public, pedestrians, and airport and airline personnel as required or reasonably inferable in the Construction Documents. Construction signage, lighting, ventilation, ADA requirements, OSHA regulations and complete compliance with construction-related laws, rules and regulations in areas of Construction Manager's work shall be the Construction Manager's responsibility.

**12.16** The following exhibits are attached hereto and incorporated in and made a part of this Agreement by reference:

Exhibit A	General Conditions
Exhibit B	Project Scope
Exhibit C	FGMP Change Order Form
Exhibit D	Sensitive Security Information
Exhibit E	Owner's Travel Reimbursement Policy
Exhibit F	Construction Document Change Order Form
Exhibit G	Staffing Plan and Billing Rates for Preconstruction Services
Exhibit H	Construction Manager's Staffing Plan
Exhibit I	E-Verify Affidavits

### **ARTICLE 13**

#### **SUCCESSORS AND ASSIGNS**

**13.1** It is expressly understood and agreed that this Agreement is personal to Owner and that the Construction Manager will have no right, power or authority to assign or delegate this Agreement or any portion thereof, either voluntarily or involuntarily, or by operation of law.

**13.2** The Construction Manager shall not assign, mortgage, pledge or transfer this Agreement without the prior written consent of Owner. If the Construction Manager is a partnership or joint venture, a transfer of any interest of a general partner or joint venturer, a withdrawal of any general partner or joint venturer from the partnership or joint venture, or the dissolution of the partnership or joint venture shall be deemed a transfer of this Agreement. If the Construction Manager is a corporation, (i) any merger, consolidation, or other reorganization of the Construction Manager or sale or other transfer of a percentage of capital stock of the

Construction Manager which results in a change of controlling persons, or (ii) any dissolution, sale or other transfer of substantially all of the assets of the Construction Manager, shall be deemed a transfer of this Agreement.

## **ARTICLE 14**

### **SPECIAL PROVISIONS**

**14.1** Construction Manager shall cooperate with the Program Manager as Owner's representative for the Project.

**14.2** Construction Manager's records for the services performed pursuant to this Agreement shall include detail and information sufficient to allocate all amounts invoiced to Owner among the various funding sources for the Project in accordance with procedures established by Owner and the Program Manager. Construction Manager's invoices to Owner shall show such allocations and shall include the level of detail and backup required by Owner and the Program Manager.

**14.3** Construction Manager and its personnel shall at all times comply with the Sensitive Security Information Requirements attached hereto as Exhibit D.

**14.4** DOA and Owner Requirements.

In accordance with policies adopted by DOA and/or Owner, Construction Manager agrees:

14.4.1 The Construction Manager shall not discriminate by segregation or otherwise against any employee or applicant for employment because of race, color, creed, national origin, sexual orientation, age or sex, and shall undertake affirmative action measures designed to guarantee and effectuate equal employment opportunity for all persons.

14.4.2 The Construction Manager shall provide information and reports requested by Owner, the City or the DOA pertaining to its obligations under this Article 14, and will permit access to its facilities and any books, records, accounts or other sources of information which may be determined by Owner, the City or the DOA to affect the Construction Manager's obligation herein.

14.4.3 The Construction Manager shall comply with all federal and state laws and regulations and all City and DOA regulations pertaining to civil rights and equal opportunity, including executive orders and rules and regulations of appropriate federal and state agencies, unless otherwise exempt therein. The Construction Manager is responsible to actively maintain updated City, DOA and Owner requirements and to conform to the requirements accordingly.

**14.5** Small and Disadvantaged Business Concerns.

Construction Manager acknowledges that (i) Owner is committed to enhancing business opportunities for small business, veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business enterprises (collectively, “**Small Business**”) as first and second tier suppliers to Owner, and (ii) Owner believes that every reasonable attempt should be made to include and utilize Small Business supplier firms as suppliers to Owner, as long as they are competitive on price, quality and service, and provide the best overall value for Owner. Construction Manager agrees to cooperate with Owner to achieve the general objective of including Small Business supplier firms as suppliers to Owner, in accordance with the guidelines described in clause (ii) above, and to use all commercially reasonable efforts to include Small Business supplier firms in its procurement process. Upon request, Construction Manager shall complete and submit to Owner a Supplier Diversity Quarterly Utilization Report, in such format as Owner may reasonably specify.

#### **14.6 General Provisions.**

14.6.1 The Construction Manager’s noncompliance with any of the provisions of this Article 14 shall constitute a material breach of this Agreement.

14.6.2 The Construction Manager shall indemnify and hold harmless Owner from any claims and demands of third persons resulting from the Construction Manager’s noncompliance with any of the provisions of this Article.

**14.7 Equal Opportunity.** Construction Manager shall comply with all equal opportunity requirements of the City that are applicable to the Work and Construction Manager’s procurement and hiring of Subcontractors to perform the Work, including, without limitation, completing forms EBO-1 and EBO-2, providing outreach to City approved minority and female owned businesses and engaging them in contracts where possible, and assisting Owner with providing monthly reports related to minority and female participation in the Project to the City.

**14.8 Illegal Immigration Reform and Enforcement Act.** The Construction Manager and its Subcontractors may be subject to the Illegal Immigration Reform and Enforcement Act, O.C.G.A. § 13-10-90, et seq. (IIREA) (“Act”). Pursuant to the Act, the Construction Manager must provide and the Construction Manager must ensure that each Subcontractor and Sub-Subcontractor provides proof of its registration with and continuing and future participation in the E-Verify Program established by the United States Department of Homeland Security. A completed Affidavit, in the applicable form set forth at Exhibit I attached hereto, must be on file for the Construction Manager and any Subcontractor or Sub-Subcontractor providing the physical performance of services to Owner. The Construction Manager and each of its Subcontractors and Sub-Subcontractors intending to do business with Owner are responsible for independently apprising themselves of and complying with the requirements of the Act. For additional information on the E-Verify program or to enroll in the program, go to: <https://e-verify.uscis.gov/enroll>.

#### 14.9 Work Product.

14.9.1 Owner (or City, to the extent the cost therefor is reimbursed by the City) shall have exclusive title to and use of all copyrights, patents, trade secrets, or other intellectual property rights associated with any programmed software, procedures, work-flow methods, reports, manuals, visual aids, data, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by the Construction Manager or its employees, subcontractors or subconsultants during the course of performing work for Owner (individually or collectively, as the context may require, “**Work Product**”). Owner (or City, to the extent the cost therefor is reimbursed by the City) shall have the sole right to obtain and to hold in its own name copyright, patent, trademark, trade secret, and any other registrations, or other such protection as may be appropriate to any Work Product, and any extensions and renewals thereof. All such Work Product made in the course of the Work rendered hereunder shall, to the extent possible, be deemed “works made for hire” within the meaning of the Copyright Act of 1976, as amended (the “**Act**”). The Construction Manager hereby expressly disclaims any interest in any and all Work Product. To the extent that any work performed by the Construction Manager is found as a matter of law not to be a “work made for hire” under the Act, the Construction Manager hereby assigns to Owner (or City, to the extent the cost therefor is reimbursed by the City) the sole right, title and interest, including the copyright, in and to all such Work Product, and all copies of them, without further consideration. For purposes of assignment of the Construction Manager’s copyright in such Work Product, the Construction Manager hereby appoints Owner (or City, to the extent the cost therefor is reimbursed by the City) as its attorney-in-fact for the purpose of executing any and all documents relating to such assignment. The Construction Manager shall obtain specific agreement to the terms of this Paragraph from each of its employees, subcontractors and subconsultants assigned to perform Work under this Agreement.

14.9.2 Neither the Construction Manager nor its personnel will copyright, patent, trademark, designate as its trade secret, sell, or distribute any Work Product.

14.9.3 The Construction Manager shall give Owner (or City, to the extent the cost therefor is reimbursed by the City) and any person designated by Owner (or City, to the extent the cost therefor is reimbursed by the City), at such party’s expense, such reasonable assistance as may be required to perfect the rights described in this Section, including, but not limited to, execution and delivery of instruments of conveyance, as may be appropriate to give full and proper effect to such assignment in the United States and any foreign country.

14.9.4 Notwithstanding any other provision in this Agreement, the Construction Manager shall have the right to retain, use and disclose, without accounting to Owner or the City, as applicable, any of the Construction Manager’s Residual Knowledge. “**Residual Knowledge**” shall mean and include only non-recorded information of the type that applicable law would permit an employee of the Construction Manager to retain and use in subsequent employment with a third party. This exception to the obligations of confidentiality and non-use shall be narrowly construed, is intended only to alleviate the

possibility of inadvertent breach of this Agreement arising from routine, unaided memory retention by employees of the Construction Manager and is not intended to permit the Construction Manager to use or disclose information known to the Construction Manager.

14.9.5 The Construction Manager may be requested to deliver certain preexisting or independently developed materials identified as such in this Agreement (“**Preexisting Materials**”). The Construction Manager maintains all right, title and interest in and to such Preexisting Materials and hereby grants to Owner and the City a nonexclusive, world-wide, perpetual, royalty free right and license to use, execute, reproduce, perform and distribute the same, and to create derivative works based thereon, for the internal business purposes of Owner and the City and their affiliates, code-share partners, connection carriers and insourced customers. Owner and the City will not otherwise decompile, disassemble or reverse engineer the Preexisting Materials, except as and to the extent authorized by applicable law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES ON  
FOLLOWING PAGE]

This Agreement entered into as of the day and year first written above.

**OWNER: DELTA AIR LINES, INC.**

**CONSTRUCTION MANAGER:**

By:  
Name:  
Title:

By:  
Name:  
Title:



Exhibit A  
General Conditions

Exhibit B  
Project Scope

Exhibit C  
**FGMP CHANGE ORDER FORM**  
**(Article 5)**

TO: Delta Air Lines, Inc.  
Av Air Pros.

Attn: \_\_\_\_\_

Gentlemen:

In accordance with Article 5 of the Construction Agreement dated \_\_\_\_\_, 2015, the undersigned shall provide all services, labor and material and to perform in accordance with the Contract Documents the performances of the Construction Services for the entire Project for a total Guaranteed Maximum Price of \$\_\_\_\_\_.

The undersigned shall achieve Substantial Completion of the entire Project on or before \_\_\_\_\_, 20\_\_, (the "Date of Substantial Completion").

The undersigned shall achieve Final Completion of the entire Project on or before \_\_\_\_\_, 20\_\_, (the "Date of Final Completion").

The Final Guaranteed Maximum Price for the entire Project of \$\_\_\_\_\_ is comprised of the following amounts:

I. Not-to-Exceed Estimated Reimbursable Cost of the Work \$\_\_\_\_\_

II. The Construction Manager's Fee \$\_\_\_\_\_

**TOTAL (Final Guaranteed Maximum Price) \$\_\_\_\_\_**

The Dates of Substantial and Final Completion and the Final Guaranteed Maximum Price are subject to adjustment in the manner provided by the Construction Management Agreement.

The terms of the Construction Management Agreement are incorporated herein by reference.

This FGMP Change Order includes the following Appendices pursuant to Paragraph 5.5.3 of the Construction Management Agreement, which Appendices are incorporated herein by reference:

Appendix A All Drawings, Specifications and other documents, including all amendments thereto, which were relied upon or used by the Construction Manager in the preparation of the FGMP Change Order.

Appendix B All Allowances, noting whether they cover furnish and delivery, or furnish, delivery and installation.

Appendix C A listing of the Assumptions and Clarifications made by the Construction Manager in the preparation of the FGMP Change Order.

Appendix D A listing of any trade, work categories or other items which are not included in the Guaranteed Maximum Price.

Appendix E A Construction Documents Schedule setting forth the dates assumed by Construction Manager for the Architect's completion of Construction Documents, which shall be consistent with Owner-approved Construction Schedule.

Appendix F A Shop Drawing Approval Schedule setting forth the schedule assumed by Construction Manager for the Architect's approval of Shop Drawings, which shall be consistent with Owner-approved Construction Schedule.

The Construction Manager agrees to furnish, within ten (10) calendar days of the date of this FGMP Change Order, a performance bond and a payment bond in accordance with the Contract Documents, with the bonds each to be in an amount equal to one hundred percent (100%) of the FGMP.

DATED: \_\_\_\_\_, 20\_\_.

**DELTA AIR LINES, INC.**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

**CONSTRUCTION MANAGER**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Exhibit D  
Sensitive Security Information

(a) All contract documents relative to this Agreement and the Project, including without limitation all plans, specifications, sketches, drawings and other renderings and documents, as well as any documents provided to the Construction Manager or prepared by the Construction Manager may contain Sensitive Security Information, as that term is defined in the Homeland Security Act and all regulations promulgated thereunder, as it relates to the security program, systems, methods, and procedures of ATL. Therefore, the contract documents, and all information contained therein, are privileged and strictly confidential and are subject to the provisions of the Homeland Security Act and 49 C.F.R. F.A.R. Part 1520, et seq.

(b) Except as required for the discharge of its duties under this Agreement or as otherwise required by law, the Construction Manager shall not reproduce, release, or distribute any such document or information in any form to any third party without the prior written permission of Owner. Unauthorized reproduction, release, or distribution may result in civil penalty or other action, as provided for in the Homeland Security Act and regulations promulgated thereunder by Owner, TSA, or others. The Construction Manager shall not use such documents or information other than for the performance of its services under this Agreement.

(c) The Construction Manager hereby agrees to defend, indemnify, and hold harmless Owner, its officers, agents, employees, and indemnitees, from and against, any and all claims, civil penalties, losses, suits, damages, legal and otherwise, arising out of or in any way connected with the Construction Manager's failure to comply with or take any act contrary to any provisions of the Homeland Security Act or any regulations promulgated thereunder.

(d) The Construction Manager shall include the requirements of this Exhibit in every contract or subconsultant agreement so that such provisions will be binding upon each of its subconsultants. Failure to include this provision in every such agreement shall be deemed to be and is a material breach of an essential covenant of this Agreement by the Construction Manager.

Exhibit E  
Travel Reimbursement Policy

**1. Policy:**

It is the policy to reimburse the reasonable costs made by the Construction Manager under contract in the performance of its contractual responsibilities. Due to the various types of contracts entered into, there is a need for a consistent process in the approval, payment, review, and accounting for expenditures incurred by authorized persons.

**2. Purpose and Objective:**

It is the purpose of this policy to:

- A. Provide clear guidelines for obtaining approval and reimbursement for travel-related expenditures by persons traveling in connection with contracted work.
- B. Serve as a reference for prospective offerors or bidders for contracts for work.
- C. Establish parameters for expenditures, accounting and auditing in connection with contracted work.

**3. Definitions:**

- A. Reasonable cost: Least costly means of accomplishing objectives, considering the nature and purpose of expenditures, the value of the authorized individual's time, and the impact on the overall contract cost or agreed upon budgets.
- B. Documentation: Original receipts, invoices, statements, etc. which confirm actual incurred costs, receipts of payment, date of transaction, and nature of the service or product received, or if other receipts are unavailable, a written letter of memorandum that summarizes the basis of the particular payment.
- C. Per Diem: Allowance for meals associated with out-of-town business travel.
- D. Business Need: Specific requirements or circumstances dictated by the nature of the requirements of the contract.
- E. Out-of-town travel: Travel of more than 50 miles one way from the authorized traveler's designated place of assignment.
- F. Non-reimbursable travel expenditures: Those expenses that were incurred without pre-approval; expenses not allowed in the contract; and expenditures not allowed in federal, state, and Owner's regulations current at that time.

**4. Application of this Policy:**

This policy will be applicable to the following types of contracts, but only to the extent that expenditures are authorized in the contract:

- A. Time and materials (expenses) contracts – T&M or T&E.
- B. Lump sum plus reimbursement of expenses.
- C. Contract with a not-to-exceed amount (NTE), which allows for reimbursement of expenses.
- D. Other types of contractual agreements that are not lump sum and have identified expenditures as reimbursable line item in the fee proposal agreement.

**5. Reimbursable Expenses:**

- A. Travel
  - 1.) For travelers to the Project site not based at the Project site area or travelers to Owner's Office not based in Owner's Office area, only the following expenses shall be reimbursed and only the stated amounts.

- a.) The means of transportation used by the authorized traveler must be the most economical means available during the time of travel, and Owner will only reimburse up to the expense of using that means. Example, if a traveler decides to drive instead of taking a plane, if the cost of a round trip ticket at the time was lower than the cost of mileage reimbursement, Owner will only reimburse up to the cost of the airfare.
- b.) If travel is by air, travel must be by Delta coach, if available, and at the most reasonable cost available at the time of travel. Round trip fare will be reimbursed only if travel is directly between the Project site or Owner's Office and the traveler's base of employment, and solely for purposes of performing the contract. If the travel is for additional purposes or includes other stops, Owner will only reimburse the proportionate share of travel costs necessary for the performance of the contract with Owner. If travel is by vehicle, reimbursement will be made based on the approved IRS reimbursable rate per mile.
- c.) Lodging at the Project site or in Owner's Office area will be paid up to the maximum Per Diem Rate established by the GSA for the current Fiscal Year for the location of the Project related overnight stay, plus the actual costs of taxes. No other room charges will be paid for lodging. This lodging limit will be adjusted based on the area's market conditions.
- d.) Meal rates shall apply whether travelers dine alone or in groups. Rates and conditions are as follows:
  - (1.) Meals while at the Project site or in Owner's Office area will be paid at actual cost, but not to exceed up to the maximum Per Diem Rate established by the GSA for the current Fiscal Year for the location of the Project related meal expense.
  - (2.) Reasonable reimbursement for meals while in transit to and from the Project site or Owner's Office will be based on arrival time at the Project site or in Owner's Office.
  - (3.) Meals will be reimbursed only for the authorized traveler and not for others who may accompany the traveler.
  - (4.) No charges for alcoholic beverages will be reimbursed.
- e.) Transportation by rental car while at the Project site or in Owner's Office area will be paid at a maximum of \$60.00 per day base rate, based on a mid-sized car rental rate. The actual costs of taxes, insurance and gas will also be paid. This limit will be adjusted on an annual basis based on the car rental market. Actual parking costs will be paid. The traveler will obtain the best rate applicable to the period of time during which the rental car is needed.
  - (1.) If the nature of the visit does not require a rental car, the reasonable cost of ground transportation will be reimbursed. Actual taxi fare will be paid and use of a personal car will be limited to the approved IRS reimbursable rate per mile.
- f.) The actual reasonable cost of other expenses incurred by the traveler while at the Project site or in Owner's Office area will not be reimbursed if the traveler has a local office or local partner or affiliate at the Project site or

at Owner's Office area. If the traveler has no local partner, office or affiliate at the Project site or in Owner's Office area, reasonable amounts for duplicating services, fax service, and other miscellaneous business expenses related to the engagement will be reimbursed at cost. Business phone calls in furtherance of the contract with Owner will be reimbursed during the period of travel. Personal calls, whether local or long distance, will not be reimbursed.

- g.) Travel in and out of the continental United States will be subject to written pre-approval by Owner. If a traveler will be originating from outside the continental U.S., the cost of travel will be reimbursed only as if the travel was originated from the home office in the U.S. unless pre-approved in writing.
- 2.) For travelers based at the Project site city or in Owner's Office city to destinations in the continental U.S., only the following expenses shall be reimbursed and only in the stated amounts:
  - a.) The traveler shall follow the provisions of Paragraph 5.A.1 of this policy.
  - b.) Travel requests will be pre-approved by Owner and should be all for the furtherance of the contract with Owner and based on an annual or program out-of-town travel budget.
  - c.) If the contractor travels with a family member, only the cost that applies to the contractor will be reimbursed.
- 3.) Travel Authorization, Reimbursement and Documentation:
  - a.) Travel expenditures shall be part of the contract's approved budget or agreed reimbursable fee. The traveler's official contract representative will recommend the authorization for travel to Owner's representative for approval using Owner's Travel Authorization Form. If the requested travel is not in the approved budget or in the agreed contract fee, the Travel Authorization Form will be forwarded to Owner's finance representative for financial and budget review and approval/disapproval. The traveler shall only make travel arrangements after receipt of an approved Travel Authorization Form from Owner.
  - b.) Reimbursements for travel-related expenditures should be submitted within 30 days after completion of travel. Owner will pay all approved travel in the amounts that are in compliance with this policy within 30 days after receipt of the reimbursement request.



- c.) The traveler shall only submit the approved Travel Authorization Form and a Travel Expense Reconciliation Form to request a reimbursement. All original receipts shall be kept at the traveler's designated office of assignment and be made available on demand during the processing of reimbursement or during audit.

Exhibit F  
Construction Document Change Order Form

**CONSTRUCTION DOCUMENT CHANGE ORDER No. \_\_\_\_**  
**(Article 5)**

TO: Delta Air Lines, Inc.  
Av Air Pros.

\_\_\_\_\_  
Attn: \_\_\_\_\_

In accordance with Article 5 of the Construction Agreement (“Agreement”) dated \_\_\_\_\_, 2012, the following Drawings and Specifications are added as Construction Documents under the Agreement:

The terms of the Agreement are incorporated herein by reference.

DATED: \_\_\_\_\_, 20\_\_.

**DELTA AIR LINES, INC.**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

[Insert Construction Manager’s name]

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

Exhibit G  
Staffing Plan and Billing Rates for Preconstruction Services

Exhibit H  
Construction Manager's Staffing Plan for Construction Services

Exhibit I  
E-Verify Affidavits

**Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1)**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

Name of Contractor: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Name of Public Employer: City of Atlanta

**I hereby declare under penalty of perjury that the forgoing is true and correct.**

Executed on \_\_\_\_\_, \_\_\_\_, 20\_\_ in \_\_\_\_\_ (city), \_\_\_\_\_ (state)

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE  
ME ON THIS THE \_\_\_\_, DAY OF \_\_\_\_\_, 201\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**FORM 1**  
**Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)**

By executing this Subcontractor Affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with \_\_\_\_\_ (name of contractor) on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

Name of Subcontractor: \_\_\_\_\_  
\_\_\_\_\_

Name of Project: \_\_\_\_\_

Name of Public Employer: City of Atlanta

**I hereby declare under penalty of perjury that the forgoing is true and correct.**

Executed on \_\_\_\_\_, \_\_\_\_\_, 20\_\_ in \_\_\_\_\_ (city), \_\_\_\_\_ (state)

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE  
ME ON THIS THE \_\_\_\_, DAY OF \_\_\_\_\_, 201\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

**FORM 1**

**Sub-subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(4)**

By executing this affidavit, the undersigned sub-subcontractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract for \_\_\_\_\_ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract) and \_\_\_\_\_ (name of contractor) on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned sub-subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned sub-subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the sub-subcontractor with the information required by O.C.G.A. § 13-10-91(b). The undersigned sub-subcontractor shall submit, at the time of such contract, this affidavit to \_\_\_\_\_ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Additionally, the undersigned sub-subcontractor will forward notice of the receipt of any affidavit from a sub-subcontractor to \_\_\_\_\_ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Sub-subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number

\_\_\_\_\_  
Date of Authorization

Name of Sub-Subcontractor: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Name of Public Employer: City of Atlanta

**I hereby declare under penalty of perjury that the forgoing is true and correct.**

Executed on \_\_\_\_\_, \_\_\_\_, 20\_\_ in \_\_\_\_\_ (city), \_\_\_\_\_ (state)

\_\_\_\_\_  
Signature of Authorized Officer or Agent

\_\_\_\_\_  
Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE  
ME ON THIS THE \_\_\_\_, DAY OF \_\_\_\_\_, 201\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

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**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION  
BETWEEN  
DELTA AIR LINES, INC. AND \_\_\_\_\_  
Delta contract number: \_\_\_\_\_**

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## **ARTICLE 1 – CONTRACT DOCUMENTS**

### **1.1 DEFINITIONS**

- 1.1.1 These General Conditions supplement the Construction Agreement between the Owner and the Construction Manager (“Agreement”). Capitalized terms herein shall have the meaning defined in the Agreement. Other capitalized terms have the meanings ascribed to them herein.

### **1.2 THE CONTRACT DOCUMENTS**

- 1.2.1 The Contract Documents are as enumerated in the Agreement. The Contract Documents may be modified or amended only as provided in the Agreement and herein.

### **1.3 THE CONTRACT**

- 1.3.1 The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral.

### **1.4 THE WORK**

- 1.4.1 The Work comprises the completed construction required by the Contract Documents and includes all labor and services necessary to produce such construction and all materials and equipment incorporated or to be incorporated in such construction.

### **1.5 EXECUTION, CORRELATION AND INTENT**

- 1.5.1 Not less than two (2) sets of the Contract Documents shall be signed by the Owner and Construction Manager as provided in the Agreement.
- 1.5.2 Execution of the Contract by the Construction Manager is a representation that the Construction Manager has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
- 1.5.3 If any errors, inconsistencies, or omissions in Contract Documents are recognized by the Construction Manager, any member of its organization, or any of its Subcontractors, the Construction Manager shall notify the Program Manager and Architect in writing of such error, inconsistency, or omissions. Such notification shall be in the form of a Request for Information (“RFI”) and the Architect shall respond in a prompt manner. Should the Specifications and Drawings fail to particularly describe the product or kind of goods to be used in any place, then it shall be the duty of the Construction Manager to make inquiry of the Architect via an RFI for what is best suited.
- 1.5.4 Where references are made in the Contract Documents to standard specifications, codes and similar documents issued by the United States government, state or local authorities, or professional and industrial societies and associations, the applicable portions thereof shall govern as fully as if they were included in their entirety herein and shall include all revisions as of the date of bid(s) solicited by Construction Manager for portions of the Work, except to the extent that said standards or requirements may be in conflict with applicable laws, ordinances or regulations. Applicable federal and state laws, rules and regulations of all agencies and authorities having jurisdiction over construction of the Work shall apply as if included herein.
- 1.5.5 Words and phrases which have well-known technical or trade meanings are used in the Contract Documents in accordance with such meanings, unless specifically defined in the Contract Documents.
- 1.5.6 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings, shall not control the Construction Manager in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

## **1.6 COMMUNICATIONS**

- 1.6.1 The Construction Manager shall conduct all communications consistent with a Project Communications Plan established by the Program Manager, as referenced in the Procedures Manual. The Program Manager is responsible for approval of this document and no changes will be made to the approved plan without prior written approval of the Program Manager.

## **ARTICLE 2 – ARCHITECT AND PROGRAM MANAGER**

### **2.1 ADMINISTRATION OF THE CONSTRUCTION DOCUMENTS**

- 2.1.1 The Architect will provide administration of the Construction Documents. Construction Manager acknowledges and agrees that the City has contracted for the Architect's services and the Owner shall not be responsible or liable for any failure of the City to cause the Architect to perform under the agreement between the City and the Architect. Owner's sole responsibility with respect to the Architect shall be to request that the City require the Architect to perform under the agreement between the City and the Architect.
- 2.1.2 The Program Manager will be the Owner's representative during construction until the Owner makes final payment to the Construction Manager. The Owner's instructions to the Construction Manager shall be forwarded through the Program Manager.
- 2.1.3 The Architect will visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of these on-site observations, the Architect will keep the Owner informed of the progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work of the Construction Manager.
- 2.1.4 Neither the Program Manager nor the Architect will be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and will not be responsible for the Construction Manager's failure to carry out the Work in accordance with the Contract Documents. Neither the Program Manager nor the Architect will be responsible for or have control or charge over the acts or omissions of the Construction Manager, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.
- 2.1.5 The Program Manager and the Architect shall at all times have access to the Work wherever it is in preparation and progress and shall comply with the Project Safety Manual and/or Program, or such other reasonable safety rules or regulations instituted by the Construction Manager, during such visits to the site of the Work. The Construction Manager shall provide facilities as detailed in the Drawings and Specifications for such access so the Program Manager's and the Architect's functions under the Contract Documents may be performed.
- 2.1.6 Based on the Architect's observations and evaluation of the Construction Manager's Applications for Payment, the Architect will determine the amounts owing to the Construction Manager and will issue Certificates for Payment in such amounts, as provided in the Agreement. The Architect's Certificates for Payment shall be advisory only and will be subject to review and approval by the Owner and the Program Manager. The Program Manager shall undertake an independent analysis of each Application for Payment and shall make a separate recommendation to the Owner.
- 2.1.7 The Architect will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with any time limits agreed upon. Unless otherwise established by the Contract Documents, the Architect shall respond to any RFI within five (5) calendar days of receipt, unless the issue(s) involved is/are of such complexity that reasonable additional time is necessary. In such case, the Architect shall notify the Construction Manager and the Program Manager.
- 2.1.8 All interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

- 2.1.9 The Architect will have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.5.2 whether or not such Work be then fabricated, installed or completed. However, neither the Architect's authority to act under this Subparagraph 2.1.9, nor any decision made in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Construction Manager, Subcontractor, any of their agents or employees, or any other person performing any of the Work.
- 2.1.10 The Architect will review and approve or take other appropriate action upon Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay in the progress of the Work; however, the maximum time for response to these submittals shall be within twenty one (21) calendar days of receipt. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.1.11 The Program Manager will prepare Change Orders.
- 2.1.12 At the written request of the Construction Manager, the Architect will conduct inspections to determine the dates of Substantial Completion and Final Completion, will receive and forward to the Owner for the Owner's review and approval written warranties and related documents required by the Contract and assembled by the Construction Manager, and will issue a final Certificate for Payment upon compliance with the requirements of Paragraph 8.4 herein. Such certificates shall be advisory only.
- 2.1.13 The duties, responsibilities and limitations of authority of the Architect and the Program Manager during construction as set forth in the Contract Documents will not be modified or extended without written direction of the Owner and the consent of the Architect or the Program Manager, respectively, in accordance with the Owner's contract agreements with those parties.
- 2.1.14 In case of the termination of the employment of the Architect or the Program Manager, the Owner shall appoint an architect or program manager whose status under the Contract Documents shall be that of the former architect or program manager.

## **ARTICLE 3 – OWNER**

### **3.1 DEFINITION**

- 3.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

### **3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

- 3.2.1 The Owner, through the Architect or the Program Manager, shall furnish surveys describing physical characteristics, legal limitations and, if applicable, records of utility locations for the site of the Project.
- 3.2.2 [intentionally deleted]
- 3.2.3 The Owner shall disclose, to the extent known to the Owner and in its possession (or that can be reasonably obtained), results and reports of prior tests, inspections, or investigations conducted by the Owner or at the Owner's direction for the Project involving structural or mechanical systems; chemical, air, and water pollution; or Hazardous Materials or other environmental subsurface conditions.
- 3.2.4 The Construction Manager shall be entitled to reasonably rely, subject to its professional judgment and experience, on the documentation provided by the Owner pursuant to Paragraphs 3.2.1 and 3.2.3 hereof.
- 3.2.5 Unless otherwise provided in the Contract Documents, the Construction Manager will be furnished, free of charge, three (3) sets of Drawings and Specifications, including one (1) reproducible set.

- 3.2.6 The Owner may forward instructions to the Construction Manager through the Program Manager.
- 3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by Separate Contractors, Payments and Completion, and Insurance in Articles 6, 8 and 10, respectively.

### **3.3 OWNER'S RIGHT TO STOP THE WORK**

- 3.3.1 If the Construction Manager fails to correct defective Work as required by Paragraph 12.2 or persistently fails to carry out the Work in accordance with the Contract Documents, and fails to initiate correction of such condition within seven (7) days of receipt of written notice from the Owner, the Owner, by a written order signed by the Owner, may order the Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or any other person or entity.

### **3.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

- 3.4.1 If the Construction Manager defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after seven (7) days following receipt by the Construction Manager of an additional written notice and, without prejudice to any other remedy the Owner may have, make good such deficiencies. In such case, an appropriate Change Order or Construction Change Directive shall be issued deducting from the payments then or thereafter due the Construction Manager the cost of correcting such deficiencies, including compensation for the Architect's and Owner's representatives' additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Owner.

## **ARTICLE 4 – CONSTRUCTION MANAGER**

### **4.1 DEFINITION**

- 4.1.1 The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term Construction Manager means the Construction Manager and the Construction Manager's authorized representative.

### **4.2 REVIEW OF CONTRACT DOCUMENTS**

- 4.2.1 The Construction Manager shall carefully review the Contract Documents and shall at once report to the Program Manager and Architect any error, inconsistency or omission discovered for their timely action. The Construction Manager shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work. The Construction Manager's review of the Contract Documents is for the purpose of facilitating construction and not for the purpose of discovering design errors, omissions, or inconsistencies in the Contract Documents.

### **4.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

- 4.3.1 The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention. The Construction Manager shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.
- 4.3.2 The Construction Manager shall be responsible to the Owner for the acts and omissions of the Construction Manager's employees, Subcontractors, Suppliers, and their agents and employees, and other persons performing any of the Work.

- 4.3.3 The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Program Manager or Architect, or by inspections, tests or approvals required or performed by persons other than the Construction Manager.

#### **4.4 LABOR AND MATERIALS**

- 4.4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.
- 4.4.2 The Construction Manager shall at all times enforce strict discipline and good order among the Construction Manager's employees and those of Subcontractors of all tiers and shall not employ on the Work any unfit person or anyone not skilled in the task assigned.

#### **4.5 WARRANTIES**

- 4.5.1 The Construction Manager warrants to the Owner that all materials and equipment furnished under this Contract will be new, unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective or nonconforming. If required by the Program Manager or Architect, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 12.2.
- 4.5.2 In addition to the foregoing stipulations, the Construction Manager shall comply with all other guarantees referred to in any portion of the Contract Documents, the more stringent requirement governing.

#### **4.6 TAXES**

- 4.6.1 The Construction Manager shall pay all taxes, consumer, use and other similar taxes for the Work or portions thereof provided by the Construction Manager which are legally enacted at the time bids are received, whether or not yet effective. The Construction Manager warrants that it is fully licensed to perform the Work and to collect for payment, state and local taxes related to the Work.

#### **4.7 PERMITS, FEES AND NOTICES**

- 4.7.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permit and for all other construction-related non-discretionary permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received.
- 4.7.2 The Construction Manager shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority required for the performance of the Work.
- 4.7.3 If the Construction Manager observes that any of the Contract Documents are at variance with applicable laws, statutes, building codes and regulations in any respect, the Construction Manager shall promptly notify the Architect and the Program Manager in writing, and any necessary changes shall be accomplished by appropriate modification.
- 4.7.4 If the Construction Manager performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect, the Construction Manager shall assume full responsibility therefor and shall bear all costs attributable thereto.

#### **4.8 SUPERINTENDENT**

- 4.8.1 The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work until Final Completion.

#### **4.9 DOCUMENTS AND SAMPLES AT THE SITE**

- 4.9.1 The Construction Manager shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Owner, Program Manager and Architect and shall be delivered to the Owner upon completion of the Work.

#### **4.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- 4.10.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Construction Manager or any Subcontractor, manufacturer, Supplier or distributor to illustrate some portion of the Work.
- 4.10.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Construction Manager to illustrate a material, product or system for some portion of the Work.
- 4.10.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 4.10.4 The Construction Manager shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work, or in the work of the Owner or any separate Contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents. The Owner or any separate Contractor shall review, approve and submit, Shop Drawings, Product, Data and Samples required for the performance of the Work with reasonable promptness and in such sequence as not to delay the Work. Approved Shop Drawings, Product Data, and Submittals shall be considered Contract Documents.
- 4.10.5 By approving and submitting Shop Drawings, Product Data and Samples, the Construction Manager represents that the Construction Manager has determined and verified all materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Architect shall not be relieved of responsibility for review, approval, or any deviation from the requirements of the Contract Documents by the Construction Manager's approval of Shop Drawings. Notwithstanding anything to the contrary herein, the Construction Manager shall not be responsible for the errors or omissions of the Architect or its subconsultants as it relates to their review and approval process.
- 4.10.6 The Construction Manager shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or Samples unless the Construction Manager has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Construction Manager shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's approval thereof.
- 4.10.7 The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.
- 4.10.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect. The Architect shall review and provide approval or further direction on each submission within twenty one (21) days of receipt of the submission. All such portions of the Work shall be performed in accordance with approved submittals.

#### **4.11 USE OF SITE**

- 4.11.1 The Construction Manager shall confine operations at the site to areas permitted by the Owner and by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment.

#### **4.12 CUTTING AND PATCHING OF WORK**

- 4.12.1 The Construction Manager shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.
- 4.12.2 The Construction Manager shall not damage or endanger any portion of the Work or the work of the Owner or any separate Contractor by cutting, patching or otherwise altering any work, or by excavation. The Construction Manager shall not cut or otherwise alter the work of the Owner or any separate Contractor except with the written consent of the party affected. The Owner or any separate Contractor shall not unreasonably withhold from the Construction Manager the Owner's or any separate Contractor's consent to cutting or otherwise altering their work.
- 4.12.3 The Owner or any separate Contractor shall not damage or endanger any portion of the Work by cutting, patching, or otherwise altering any Work, or by excavation. The Owner or any separate Contractor shall not cut or otherwise alter the Work of the Construction Manager except with the written consent of the Construction Manager. The Construction Manager shall not unreasonably withhold from the Owner or any separate Contractor the Construction Manager's consent to cutting or otherwise altering the Work.

#### **4.13 CLEANING UP**

- 4.13.1 The Construction Manager at all times shall keep the premises free from accumulation of waste materials and rubbish caused by operations under the Contract Documents. At the completion of the Work, the Construction Manager shall remove all waste materials and rubbish from and about the Project as well as all the Construction Manager's tools, construction equipment, machinery and surplus materials.
- 4.13.2 If the Construction Manager fails to clean up the premises of the Work, and fails to do so within twenty-four (24) hours of receipt of notice from the Owner or the Program Manager, the Owner may do so and the reasonable cost thereof shall be charged to the Construction Manager.

#### **4.14 COMMUNICATIONS**

- 4.14.1 The Construction Manager shall forward all communications to the Owner through the Program Manager.

#### **4.15 ROYALTIES AND PATENTS**

- 4.15.1 The Construction Manager shall include in the FGMP and the IGMP payment for any known royalties and license fees. The Construction Manager shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified in the Contract Documents, but if the Construction Manager has reason to believe that the design, process or product specified is an infringement of a patent, the Construction Manager shall be responsible for such loss unless the Construction Manager promptly gives such notice to the Architect.

#### **4.16 INDEMNIFICATION**

- 4.16.1 Except as provided below in clauses (1) and (2) of this Paragraph 4.16.1, to the fullest extent permitted by law, the Construction Manager shall indemnify, defend and hold harmless the Owner, the Program Manager, the City, the DOA and their directors, officers, members, employees, and agents (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities, judgments, costs and expenses of any kind or nature whatsoever, including, but not limited to, interest, court costs and attorneys' fees, which in any way arise out of or result from any act(s) or omission(s) by the Construction Manager, any Subcontractor, any



Supplier (or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable) in the performance of any Work for or on the Project, supplying materials therefor, or in connection with the performance or non-performance of any other obligation under the Agreement, including but not limited to the following:

- (1) Injury to or sickness, disease or death of any person (including but not limited to workers);
- (2) Damage to or destruction of any property, real or personal; provided, however, that the Construction Manager's obligations under this Paragraph 4.16.1 shall not extend to damage to the Work itself to the extent such damage is covered by the Builder's Risk insurance policy for the Project;
- (3) Payment of all federal, state, and local taxes;
- (4) Obligations or liability under or with respect to any violation of federal, state and local laws, regulations, rules, codes and ordinances (including but not limited to those concerning environmental protection);
- (5) Any claim or lien asserted against any real or personal property located at the Airport, the Project or the Project Site, or against the Owner, the City, the DOA or any property of either by any material or service contractor, Subcontractor, mechanic or Supplier acting for or under the Construction Manager, or any claim or lien arising out of any contractual or employee relationship with the Construction Manager or any Subcontractor.

This Paragraph 4.16.1 shall apply regardless of whether or not the damage, loss or injury complained of arises out of or relates to the negligence (whether active, passive, or any other type) of, or was caused in part by, an Indemnified Party. However, (1) nothing contained in this Paragraph shall be construed as a release or indemnity by Construction Manager of an Indemnified Party from or against any loss, liability or claim arising solely from the negligence or willful misconduct of that Indemnified Party, and (2) with respect to claims insured only under the Errors and Omissions/Professional Liability policy described in Paragraph 10.1.2, this indemnity shall apply only to the extent such claims arise out of or result from the negligent acts, errors, omissions or willful misconduct of the Construction Manager, or anyone directly or indirectly employed by the Construction Manager or anyone for whose acts the Construction Manager may be liable, and Construction Manager's duty to defend shall be limited by the terms of Construction Manager's Errors & Omissions policy. This Paragraph shall not be construed to negate, abridge or otherwise reduce any other right to indemnity that would otherwise exist in favor of an Indemnified Party, or any other obligation of Construction Manager, its officers, directors, employees, agents, Subcontractors or Suppliers to indemnify an Indemnified Party. Construction Manager's obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits paid or payable by or for Construction Manager or any Subcontractor under Worker's Compensation acts, disability benefits acts or other employee benefit laws or regulations. The Construction Manager shall incorporate this indemnity provision into all contracts/subcontracts it executes for the performance of any Work under the Agreement. The foregoing indemnity obligation shall not be waived or reduced because Owner or the City approved, required modification of, or did not require modification of any aspect of the Work, including without limitation any plan, calculation or specification submitted by or on behalf of Owner or the City concerning or relating to the Work. The indemnification obligations of this Paragraph shall survive termination or expiration of the Agreement.

#### **4.17 LABOR**

- 4.17.1 The Construction Manager agrees that it will employ, directly or indirectly, in connection with the Project only labor which can work in harmony with that being employed by the other party, and other tenants at the Project site.

### **ARTICLE 5 – SUBCONTRACTORS**

#### **5.1 DEFINITION**

- 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Construction Manager to perform any of the Work. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or a Subcontractor's authorized representative. The term Subcontractor does not include any separate contractor or subcontractor of a separate contractor, unless the context reasonably require otherwise. The selection of Subcontractors and material or equipment Suppliers shall be made as follows:

## **5.2 SELECTION OF SUBCONTRACTORS**

- 5.2.1 The Construction Manager shall prequalify Subcontractor candidates and competitively bid all subcontract Work in accordance with Paragraph 5.3 hereof. However, the Construction Manager may request the Owner's consent to competitively negotiate portions of the Work. In such event, the Construction Manager shall provide the Owner with detailed justification for removal of the specified Work from the bidding requirements and the alternative method of selection proposed by the Construction Manager and shall provide any information reasonably requested by the Owner concerning the candidates the Construction Manager has identified for the specified Work. Consent to removal of the specified Work from the bidding requirements shall be at the Owner's sole discretion
- 5.2.2 The Construction Manager shall award no portion of the Work to any company or firm owned by or related to the Construction Manager without the prior written approval of the Owner.

## **5.3 PREQUALIFICATION AND BIDDING REQUIREMENTS AND PROCEDURES**

- 5.3.1 The Construction Manager will issue a Request for Qualifications to firms to submit their qualifications to provide construction services for the Project. Interested firms shall complete the pre-qualification documentation and submit same to the Construction Manager. The Construction Manager shall prepare an evaluation of each response. The Owner and the Construction Manager shall then participate in finalizing the list of pre-qualified firms that will be invited to bid. Pre-qualification, bidding and award of subcontracts shall be in accordance with this Article and the Procedures Manual.
- 5.3.2 In the Request for Qualifications, the general scope of Work and the Project duration will be specified. Once a list of pre-qualified firms is determined, then the Construction Manager shall issue invitations to bids to the pre-qualified firms.
- 5.3.3 During the process of determining the list of pre-qualified firms, the references and sureties of interested firms will be contacted, and records of correspondence, phone calls and other communications relative to evaluation will be kept to compile information about the firm's qualifications. All of the foregoing shall be done by the Construction Manager.
- 5.3.4 The Owner and the Construction Manager will review the documentation submitted. Based on the evaluation, firms meeting qualification criteria will be pre-qualified to bid on portions of the Work as they are released for bid. The Construction Manager shall furnish such firms with the documents needed to bid on the applicable portion(s) of the Work.
- 5.3.5 Bids received by the Construction Manager from pre-qualified bidders will be opened and reviewed in a private session which representatives from the Owner and/or the Program Manager, and the Construction Manager will attend. The Construction Manager shall have the primary responsibility for conducting the session. The Construction Manager shall prepare a bid tabulation. The bid tabulation may be evaluated by the Owner, the Program Manager and/or the Architect. In order to reduce Project costs and accurately evaluate bids, the Construction Manager shall have the right to negotiate scope, terms and conditions with the lowest responsive bidders prior to entering into subcontracts for the Work bid. Following negotiations with the lowest responsive bidders, revised bids will be submitted at a set time and available for review by the Program Manager. The Owner shall have the right to review, approve and reject bids. In the event the Construction Manager desires to reject the lowest responsive bid, it shall provide the Owner with a written explanation of the Construction Manager's recommendation of the rejection of the bid and identify the next lowest responsive bidder for the Owner's review and approval.

- 5.3.6 The Construction Manager shall not contract with any such bidder to whom the Owner or the Architect has made reasonable objection. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has a reasonable objection.
- 5.3.7 If the Owner or the Architect has reasonable objection to any bidder, the Construction Manager shall submit a substitute to whom the Owner and the Architect has no reasonable objection, and the Final Guaranteed Maximum Price shall be increased by the reasonable difference in cost, if any, occasioned by such substitution and an appropriate Change Order shall be issued.
- 5.3.8 The Construction Manager shall make no substitution for any Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

#### **5.4 SUBCONTRACTUAL RELATIONS**

- 5.4.1 By an appropriate written agreement, the Construction Manager shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Construction Manager by the terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager, by the Contract Documents, assumes toward the Owner and the Architect. Said agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. The Construction Manager shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Prior to execution of the Subcontract, Construction Manager shall make available, at its site office or other designated location, copies of the Contract Documents to which the Subcontractor will be bound pursuant to this paragraph 5.4. Each Subcontractor shall similarly make copies of such documents available to Sub-subcontractors.

### **ARTICLE 6 – WORK BY OWNER OR BY SEPARATE CONTRACTORS**

#### **6.1 OWNER’S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

- 6.1.1 The Owner reserves the right to perform work related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or substantially similar General Conditions. If the Construction Manager claims that delay or additional cost is involved because of such action by the Owner, the Construction Manager shall make such claim as provided elsewhere in the Contract Documents.
- 6.1.2 [Intentionally omitted.]
- 6.1.3 The Owner will provide for the coordination of the work of the Owner’s own forces and of each separate Contractor with the Work of the Construction Manager, who shall cooperate therewith as provided in Paragraph 6.2.

## **6.2 MUTUAL RESPONSIBILITIES**

- 6.2.1 The Owner may enter into one or more contracts with other contractors to perform portions of the Work on the site of the Work. The Project is dependent upon the timely and satisfactory execution of the Work of the Construction Manager and the work of these separate contractors, and will necessarily involve the need for the Construction Manager and these separate contractors to closely coordinate the scheduling and performance of all construction and installation activities. To this end, the Construction Manager agrees to fully coordinate the Work with the work of each separate Contractor engaged by the Owner. The Construction Manager shall coordinate its schedule and use of the Work site, including any common areas, facilities and access roads, with these separate contractors, and shall conduct and arrange the Work so as not to impede or interfere with the work of such separate contractors. Without limitation, the Construction Manager agrees to coordinate lay down and storage space for use by the Construction Manager and separate contractors, delivery schedules of vendors and suppliers, and adequate security measures for equipment and materials. The Construction Manager agrees to provide these separate contractors with all dependent data and requirements necessary for the satisfactory completion and integration of the work of such separate contractors with the Work, examine the drawings and specifications of the work of such contractors where necessary for the satisfactory completion of the Work. At each location where a portion of the Work to be constructed by the Construction Manager abuts a portion of the Work to be constructed or installed by a separate contractor, the Construction Manager shall take special care to ensure that such construction or installation is coordinated so as to result in a smooth junction between the two portions of the Work, without gaps or mismatches in materials, equipment, utilities, or grade. The Construction Manager shall participate with other contractors and the Owner in reviewing construction and installation schedules when directed to do so.
- 6.2.2 If any part of the Construction Manager's Work depends on proper execution or results upon the work of the Owner or any separate Contractor, the Construction Manager shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Construction Manager to so report shall constitute an acceptance of the Owner's or such other Contractor's work as fit and proper to receive the Construction Manager's Work, except as to defects which may subsequently become apparent.
- 6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor to the extent allowed by the relevant Contract Documents applicable to the party asserting any such claim.
- 6.2.4 Should the Construction Manager wrongfully cause damage to the work or property of the Owner, or to other work on the site or at the Airport, the Construction Manager shall promptly remedy such damage.
- 6.2.5 Should the Owner or a separate Contractor wrongfully cause damage to the Work or property of the Construction Manager, the Owner or separate Contractor shall promptly remedy such damage.
- 6.2.6 Should the Construction Manager wrongfully cause damage to the work or property of any separate Contractor, or should a separate Contractor of the Owner wrongfully cause damage to the Work or property of the Construction Manager, the Construction Manager, Owner, and the separate Contractor shall, upon due notice, promptly attempt to settle by agreement, or otherwise to resolve the dispute.

## **6.3 OWNER'S RIGHT TO CLEAN UP**

- 6.3.1 If a dispute arises between the Construction Manager and separate Contractors as to their responsibility for cleaning up, the Owner may clean up after a period of twenty-four (24) hours notice to the Construction Manager and the Contractor(s) and charge the reasonable cost thereof to the party responsible therefor as the Owner shall reasonably determine.

## **ARTICLE 7 – MISCELLANEOUS PROVISIONS**

### **7.1 GOVERNING LAW**

- 7.1.1 The Contract shall be governed by the laws of the State of Georgia, without giving effect to the conflicts of laws provisions therein that would otherwise lead to the application of the law of another jurisdiction.

## **7.2 WRITTEN NOTICE**

- 7.2.1 Any notice, consent, approval, or other communication which is provided for or required by the Contract Documents must be in writing and may be delivered in person to any party or may be sent by facsimile transmission with a copy sent contemporaneously by U.S. Mail; telegraph; courier; or registered or certified U.S. mail with postage pre-paid, return-receipt requested. Any such notice or other written communication shall be deemed received by the party to whom it is sent (i) in the case of personal delivery or courier delivery on the date of delivery to the party to whom such notice is addressed, (ii) in the case of facsimile transmission or telegram, one (1) business day after the date of transmission, and (iii) in the case of registered or certified mail, the earlier of the date receipt is acknowledged on the return-receipt for such notice or three (3) days after the date of posting by the United States Post Office. For purposes of such notices, the addresses of the parties shall be as follows, which addresses may be changed at any time by written notice given in accordance with this provision:

if to Owner:	<u>U. S. Mail Deliveries:</u> Delta Air Lines, Inc. Corporate Real Estate Department 877 P.O. Box 20706 Atlanta, Georgia 30320 Attention: Vice President - CRE Fax Number: (404) 715-2548	<u>Overnight Deliveries:</u> Delta Air Lines, Inc. Corporate Real Estate Department 877 1030 Delta Boulevard Atlanta, Georgia 30354-1989 Attention: Vice President - CRE Fax Number: (404) 715-2548
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if to Construction Manager:

Attention:  
Facsimile No.:

## **7.3 CLAIMS FOR DAMAGES**

- 7.3.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any employees, agents or others for whose acts the other party is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage unless a specific time period for notice is included in the Contract Documents.

## **7.4 RIGHTS AND REMEDIES**

- 7.4.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
- 7.4.2 No action or failure to act by the Owner or the Construction Manager shall constitute a waiver of any right or duty afforded either of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **7.5 TESTS**

- 7.5.1 If the Contract Documents, construction-related laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over construction-related issues require any portion of the Work to be inspected, tested or approved, the Construction Manager shall give the Architect and the Program Manager timely notice of its readiness so they may observe such inspection, testing or approval. The Construction Manager shall bear all costs of such inspections, tests or approvals conducted by public authorities as a result of construction-related laws, ordinances, rules, regulations, codes, or orders of any public authority having jurisdiction over the Work and in effect as of the date of the Agreement or coming into effect after such date but published

before such date. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

7.5.2 If the Architect determines that any Work requires special inspection, testing, or approval which Subparagraph 7.5.1 does not include, the Architect will, upon written authorization from the Owner or the City, as applicable, instruct the Construction Manager by proper modification to order such special inspection, testing or approval, and the Construction Manager shall give notice as provided in Subparagraph 7.5.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Construction Manager shall bear all costs thereof, including compensation for the Architect's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.5.3 Required construction-related certificates of inspection, testing or approval shall be secured by the Construction Manager and promptly delivered by the Construction Manager to the Architect.

7.5.4 If the Architect is to observe the inspections, test or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the source of supply.

## **7.6 HEADINGS**

7.6.1 All headings used in this Contract are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of the Contract Documents.

## **7.7 INTEREST**

7.7.1 Payments due and unpaid hereunder shall bear interest at the Prime Rate, as published by the Wall Street Journal.

## **7.8 DOING BUSINESS WITH OWNER**

7.8.1 In performing the Work, the Construction Manager shall comply with the principles of business ethics and conduct required of suppliers to the Owner as set forth in Owner's booklet entitled "Doing Business with Delta," available on-line at <http://images.delta.com.edgesuite.net/delta/pdfs/doingbiz.pdf>.

# **ARTICLE 8 – PAYMENTS AND COMPLETION**

## **8.1 CONTRACT SUM**

8.1.1 The Contract Price is stated in the Owner-Construction Manager Agreement and, including authorized adjustments thereto, is the maximum amount payable by the Owner to the Construction Manager for the performance of the Work under the Contract Documents. As used herein, except where the context requires otherwise, the terms "Contract Price" and "Contract Sum" shall mean the Initial Guaranteed Maximum Price (IGMP) or Final Guaranteed Maximum Price (FGMP), as applicable, for the entire Work.

## **8.2 SCHEDULE OF VALUES**

8.2.1 As packages of Construction Documents for the Work are released and, before the first Application for Payment for any such Work, the Construction Manager shall submit to the Architect and the Program Manager a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect shall reasonably require. When the Final Guaranteed Maximum Price for the entire Work is added to this Agreement, Construction Manager shall submit a separate schedule of values for same. The schedule of values shall allocate the Final Guaranteed Maximum Price for the Work. The Construction Manager's Fee shall be shown as a single separate item. Each schedule of values shall be subject to the review and approval of the Owner and the Architect and such approval shall not be unreasonably withheld, conditioned, or delayed. If, at any time, the Owner reasonably demonstrates that a schedule of values is unbalanced, the Construction Manager shall revise such schedule of values. Each approved schedule of values shall be used as the basis for each Application for Payment.

### 8.3 SUBSTANTIAL COMPLETION

8.3.1 The term “Substantial Completion” of the Work or designated portion thereof shall mean when the Work or a designated portion thereof is determined by the Owner to be sufficiently complete in accordance with the Contract Documents such that the Work or designated portion thereof is physically habitable, operational, and usable for its intended purposes. Only incidental corrective work under the Punch List Items and cleaning beyond cleaning needed for the Owner’s use may remain for final completion. In addition to the foregoing, Substantial Completion will not be determined to have occurred if the Owner is not also in receipt of:

- (i) any and all Certificate(s) of Occupancy, Partial, Temporary, or otherwise, as required for beneficial occupancy, except where the failure to issue such certificate(s) is due to reasons not the fault of the Construction Manager;
- (ii) a detailed list prepared by the Construction Manager listing all “Punch List Items” to be corrected and listing a time certain for the completion of such correction of each Item (which cannot exceed thirty (30) days except for items that reasonably cannot be completed within such time period);
- (iii) all maintenance and operating manuals, parts lists, guarantees, warranties (including, but not limited to, manufacturer’s warranties), copies of service agreements, and all other written material necessary or desirable to operate and maintain the Project, all of which shall be bound in a volume format acceptable to the Owner ;
- (iv) keys; and
- (v) all affidavits, lien waivers, lien releases, bonds, certifications and submissions required by that date by the Contract Documents.

8.3.2 When the Construction Manager considers that the Work, or a designated portion thereof, is Substantially Complete as defined in Paragraph 8.3.1 hereof, the Construction Manager shall notify the Owner, the Program Manager, and the Architect in writing that Construction Manager considers the Work (or designated portion thereof) to be Substantially Complete and shall prepare and submit to the Owner, the Program Manager, and the Architect along with such written notification all of the documents, certificates, lists (including a detailed list of Punch List Items), and other information required for Substantial Completion by Paragraph 8.3.1. Promptly after the issuance of such notice, the Construction Manager, Owner, Program Manager and the Architect shall make a joint inspection of the Work and review and supplement the detailed list of Punch List Items. Any failure by the Construction Manager, Owner, Program Manager and Architect to include items on the detailed list of Punch List Items that is required for Substantial Completion by Paragraph 8.3.1 hereof does not alter in any way the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents.

8.3.2.1 Notwithstanding any other provision of this Agreement or the Contract Documents, the Construction Manager agrees that it shall not wait until the entire Work is nearly substantially complete to prepare a list of Punch List Items; instead, it will conduct inspections and begin to prepare such lists on an Individual Project or area-by-area basis as sufficient work is completed on an Individual Project or in an area it proposes is substantially complete to justify an initial preparation of such a list for the Individual Project or area.

8.3.3 Promptly following the Owner’s actual receipt from the Construction Manager of the written notification and accompanying documents, certificates, lists, and other information contemplated by Paragraph 8.3.1 hereinabove, the Owner shall notify the Construction Manager that the Owner has determined that Substantial Completion either has, or has not, been achieved.

8.3.4 If, pursuant to Paragraph 8.3.3 hereinabove, the Owner notifies the Construction Manager that the Owner has determined that Substantial Completion has not been achieved, the Owner simultaneously shall provide to the Construction Manager a detailed list of the reasons and/or items supporting such determination. The

Construction Manager shall correct and complete the Work so as to achieve Substantial Completion and shall thereupon again notify the Owner as set forth in Paragraph 8.3.2 hereinabove. Promptly following, but no later than fourteen (14) days of the Owner's receipt of such notice, the Owner shall again make a determination as to whether Substantial Completion has been achieved and shall notify the Construction Manager of the Owner's determination with respect thereto.

- 8.3.5 When the Owner determines that the Work or designated portion thereof is Substantially Complete, the Owner shall notify the Construction Manager as set forth hereinabove and shall provide to the Construction Manager a list (the "Punch List") of all Punch List Items remaining to be completed or corrected. In preparing the Punch List, Owner and Architect may utilize some, all, or none of the list of Punch List Items submitted by the Construction Manager pursuant to Paragraph 8.3.2. hereinabove and may make any modifications and additions thereto which Owner deems necessary. The Punch List Items may be amended by Owner within thirty (30) days following the submission of the Punch List to the Construction Manager. All Punch List Items must be completed to the satisfaction of City and Owner within forty-five (45) days after the development of the Punch List.
- 8.3.6 Upon Owner's notification that Substantial Completion of the Work or designated portion thereof has been achieved (said notification shall not be unreasonably withheld, conditioned, or delayed provided all conditions and requirements are met) and upon submission to Owner of an Application for Payment by the Construction Manager following Owner's notification that Substantial Completion has been achieved, the Owner shall pay Construction Manager within the time period prescribed in the Agreement, the amount of such Application verified and approved by Owner, and the Owner may make payment reflecting an adjustment in retainage, if any, for such Work or portion thereof, as provided in the Contract Documents. In no event shall Owner release more retainage than is permitted by the City.

#### **8.4 FINAL COMPLETION AND FINAL PAYMENT**

- 8.4.1 "Final Completion" of the Work shall be achieved when the Owner notifies the Construction Manager in writing that all Punch List Items have been fully completed and corrected to the Owner's satisfaction and that the Work, or designated portion thereof, has been fully performed in accordance with the Contract Documents and all other requirements of the Contract Documents have been satisfied. However, in the event that Final Completion of one or more Punch List Items cannot reasonably be achieved within the thirty (30) day time period allowed by Paragraph 8.3.1(ii), the Owner and Construction Manager will agree on a reasonable value to be withheld pending the completion of the remaining Punch List Items and the Owner will release the balance of the funds held in retainage pursuant to Paragraph 10.2.2 of the Agreement.
- 8.4.1.1 When the Construction Manager considers that the Work, or designated portion thereof, is Finally Complete, it shall notify the Owner, the Program Manager, and the Architect in writing and shall prepare and submit to Owner, the Program Manager and Architect all of the documents, certificates and other information required by Paragraph 8.4.2 hereof.
- 8.4.2 Neither the final payment nor the remaining retainage shall become due until the Construction Manager submits to the Owner all of the following:
- (a) A final Application for Payment, submitted and substantiated in accordance with the requirements of the Contract Documents;
  - (b) Final certificates and all other required approvals from all authorities having jurisdiction, certifying to the proper removal and disposal of all waste materials and substances of the Work in accordance with all applicable laws, statutes, orders, rules, regulations, and ordinances;
  - (c) Certificates of Occupancy and any other certificates, permits, or other documents necessary or required for permanent occupancy and full use of the Project;
  - (d) Final releases of lien and affidavits from all Subcontractors and Suppliers in the forms attached to the Agreement, if any, or such other form required by Owner;



- (e) A final affidavit and lien waiver from the Construction Manager in the forms attached to the Agreement, if any, or such other form required by Owner;
  - (f) Consent of surety company to final payment;
  - (g) Record as-completed drawings of the Work;
  - (h) A complete listing of all Subcontractors and Suppliers with business address, and items supplied, or Work performed, by such Subcontractors and Suppliers;
  - (i) Copies of all test data taken, including a report satisfactory to the Owner that all mechanical systems have been and are properly balanced and a description of corrective actions taken for non-conforming work or items, if any;
  - (j) All parts lists and repair source lists;
  - (k) All other submissions, certifications, information, materials, or documents required by the Contract Documents; and
  - (l) If required by the Owner, other reasonable data establishing payment or satisfaction of all claims or obligations, such as receipts and additional releases, to the extent and in such reasonable form as may be designated by the Owner.
- 8.4.3 At the completion of the Work, or designated portion thereof, and prior to release of final payment, the Owner shall have the right to review the accounting records of the Construction Manager to insure that accounts payable are current and to confirm that there are no financial liabilities related to the Work except those due in connection with final payment.
- 8.4.4 Upon receipt of all documents, materials and other data required under Paragraph 8.4.2 hereinabove and upon confirmation of the financial status of the Project as set forth in Paragraph 8.4.3 hereinabove and approval from the City, Owner shall make final payment to Construction Manager within the time period prescribed in the Agreement, provided that the Construction Manager has delivered to the Owner all of the documents, materials, and other data required under Paragraph 8.4.2 hereinabove. In the event that all of the documents, materials, and other data are not submitted by Construction Manager on the same date, said thirty-day period shall not begin to run until the last date that any such documents, materials, or data are received by Owner. The Owner shall promptly notify the Construction Manager of any missing document, material, or data.
- 8.4.5 The acceptance of final payment shall constitute a waiver of all claims by the Construction Manager except those previously made in writing and identified by the Construction Manager as unsettled at the time of the final Application for Payment.

## **ARTICLE 9 – PROTECTION OF PERSONS AND PROPERTY**

### **9.1 SAFETY PRECAUTIONS AND PROGRAMS**

- 9.1.1 The Construction Manager shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

- 9.1.2 The Construction Manager shall prepare a Project Safety Manual approved by the Owner, and such approval shall not be unreasonably withheld, conditioned, or delayed. The Construction Manager shall make such reasonable revisions to the Project Safety Manual as the Owner may request during the course of the Project. The Construction Manager and the Owner, Program Manager, and Architect to the extent applicable thereto shall, until final completion and acceptance of the Work, comply fully with all facets of the Project Safety Manual. The Construction Manager shall require by appropriate contractual language in each subcontract that each Subcontractor shall comply with same and likewise require its Sub-subcontractors to comply with same; provided, however, that the standards in the Project Safety Manual shall serve as minimum standards and, in the event any Subcontractor or Sub-subcontractor normally follows standards more stringent than those in the Project Safety Manual, they shall be allowed to follow the more stringent standards.

## **9.2 SAFETY OF PERSONS AND PROPERTY**

- 9.2.1 The Construction Manager shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
1. all employees on the Work and all other persons who may be affected thereby including, but not limited to, customers and employees of the Owner, and Airport tenants;
  2. all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Construction Manager, its Subcontractors or their subcontractors of any tier; and
  3. the Owner's personal property and the personal property of others, including, but not limited to, computer and communications equipment and aircraft;
  4. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated in the Contract Documents for removal, relocation or replacement in the course of construction.
- 9.2.2 The Construction Manager shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property of their protection from damage, injury or loss.
- 9.2.3 The Construction Manager shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.
- 9.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Construction Manager shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
- 9.2.5 The Construction Manager shall promptly remedy all damage or loss to any property caused in whole or in part by the Construction Manager, any Subcontractor, or anyone directly or indirectly employed by any of them.
- 9.2.6 The Construction Manager shall designate a full-time responsible member of the Construction Manager's organization at the site whose duty shall be prevention of accidents. This person shall be an experienced construction safety professional familiar with OSHA and all other standards and guidelines for worker safety. This person shall have no other collateral duties.
- 9.2.7 The Construction Manager shall not load or permit any part of the Work to be loaded so as to endanger its safety.

### **9.3 EMERGENCIES**

- 9.3.1 In any emergency affecting the safety of persons or property, the Construction Manager shall act, at the Construction Manager's discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in Article 11 for Changes in the Work.

### **9.4 ASBESTOS-CONTAINING MATERIALS**

- 9.4.1 Construction Manager represents to Owner that Construction Manager is experienced, or that Construction Manager will subcontract with a Subcontractor who is experienced, in the abatement of asbestos-containing materials ("ACMs"), that Construction Manager or such Subcontractor shall perform the Work in a thorough, efficient, and workmanlike manner, promptly and with due care, and in accordance with that standard of care and skill ordinarily executed by members of the professions doing similar work, that Construction Manager or such Subcontractor is aware of the dangers which ACMs pose to the environment and to the health of society, and that Construction Manager or such Subcontractor shall have trained all employees and agents as required by any applicable laws as necessary in order to safely conduct the Work before commencing the Work.
- 9.4.2 Construction Manager represents and warrants to Owner that Construction Manager, and any Subcontractor, is in full compliance with all applicable laws. Construction Manager shall perform the Work or shall cause the Work to be performed, and shall erect and maintain or cause to be erected and maintained all reasonable safeguards for safety and protection, pursuant to the Contract Documents, and in accordance with all applicable federal, state and local laws, including, but not limited to, 29 C.F.R. section 1910, 29 C.F.R. section 1926, and 40 C.F.R. section 61 and all reasonable safety and performance guidelines adopted from time to time by the Architect (it being understood that in the context of Work involving ACMs, the term "Architect" shall refer to the design professional selected by Owner to prepare the plans and specifications for such Work, whether such design professional is an architect, an engineer, or other professional).
- 9.4.3 Construction Manager warrants that it will dispose or cause the disposal by its Subcontractor of all of the waste generated by the Work, including without limitation all ACMs or other potentially hazardous or toxic waste materials, generated at the Project site as a result of the Work, in accordance with all applicable laws, and the Contract Documents.
- 9.4.4 Construction Manager and its Subcontractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
- 9.4.5 In addition to the requirements set forth in, and unless otherwise provided in, the Contract Documents, the date of final completion of the Work or designated portion thereof shall be no sooner than the date upon which the Architect determines that all of the following have occurred in accordance with the Contract Documents and all applicable laws: (a) all ACMs have been abated from the Project site and properly disposed of; (b) the Project site has been thoroughly cleaned; and (c) clearance air monitoring has been conducted until satisfactory concentrations of airborne asbestos fibers have been reached.

## **9.5 HAZARDOUS MATERIALS**

- 9.5.1 If Construction Manager encounters on the Project site material reasonably believed to be Hazardous Materials that were not anticipated by the Construction Documents, including without limitation ACMs in a location or condition that is not contemplated by the Construction Documents, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Owner in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and the Construction Manager if in fact the material is Hazardous Materials. The Work in the affected area shall be resumed in the absence of Hazardous Materials, or when it has been rendered harmless by written agreement of the Owner and the Construction Manager.
- 9.5.2 Hazardous Materials” shall mean, but not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any asbestos (whether or not friable) and any ACMs, lead, paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, etchants, pickling and plating waste, explosives, reactive metals, and compounds, pesticides, herbicides, radon gas, urea formaldehyde, foam insulation and chemical, biological and radioactive waste, or any other similar materials which are included under or regulated by any federal, state or local environmental laws.

## **ARTICLE 10 – INSURANCE AND BONDS**

### **10.1 CONSTRUCTION MANAGER’S INSURANCE PROVISIONS**

- 10.1.1 At Owner’s cost and option, Owner may or will procure and maintain an Owner-Controlled Insurance Program (“OCIP”) for the benefit of (and including as named insureds) the Owner, the Construction Manager, and all qualified and enrolled consultants, contractors and subcontractors, while engaged in services or Work for the Project. If obtained, Owner and the Construction Manager will enter into an amendment to the Agreement setting forth the terms and conditions of and requirements for the OCIP. The Construction Manager agrees that it will abide by the terms and conditions of the OCIP program and shall, by appropriate contractual language in its subcontracts, require its qualified and enrolled subcontractors and subconsultants to comply with same. The Construction Manager shall require subcontractors and subconsultants not qualified and enrolled in the OCIP to provide the coverages required and identified in Section 10.1.3. The Owner shall be responsible for all deductibles payable under any OCIP that it elects to procure.
- 10.1.2 In addition to the coverages identified above, at Owner’s cost and option, Owner may procure and maintain for the benefit of (and including as named insureds) Owner, the Construction Manager, and all qualified consultants, contractors and subcontractors, while engaged in services for the Project, Contractor’s Pollution Liability insurance on an occurrence basis for claims for bodily injury or property damage arising from covered operations per the terms of the insurance policy. If obtained, the Construction Manager shall comply with all terms of this policy. Owner shall be responsible for all deductibles payable under this policy.
- 10.1.3 Construction Manager’s Insurance Provisions. To the extent the Construction Manager and/or its contractors or subcontractors are not enrolled in the OCIP, or are enrolled in the OCIP, but the coverages outlined in the OCIP are not provided to Construction Manager or its contractors or subcontractors (as the case may be) under such program, or Owner does not obtain an OCIP program, during the life of this Contract and for such additional time as may be required hereunder Construction Manager shall maintain the following insurance coverages, with an insurance company or companies satisfactory to Owner or the City (if applicable) for claims which may arise from and during operations under this Contract, whether such operations be by Construction Manager, its Subcontractors or anyone directly or indirectly employed by any of them. Certificates of such insurance shall be filed with Owner prior to commencing the services contemplated by this Contract (and, upon request of Owner, Construction Manager will provide Owner a full copy of Construction Manager’s Professional Liability policy, including all endorsements), and shall provide coverage in not less than the following amounts:

Commercial General Liability	\$2,000,000 Each Occurrence \$2,000,000 Personal Injury/Advertising Injury \$4,000,000 General Aggregate \$4,000,000 Products/Completed Operations Aggregate \$100,000 Damage to Premises Rented to You \$10,000 Medical Pay Limit
Worker's Compensation	Statutory limits
Employer's Liability	\$1,000,000 Each Accident \$1,000,000 Each Employee \$1,000,000 Policy Limit
Automobile Liability	\$1,000,000 (or \$10,000,000 if Construction Manager will operate automobiles on the secured area of an airport) Each Accident (including owned, hired and non-owned automobiles)
Professional Liability (Errors & Omissions)	\$3,000,000 Per Claim \$3,000,000 Annual Aggregate
Excess/Umbrella	\$50,000,000 Each Occurrence \$50,000,000 General Aggregate \$50,000,000 Products/Completed Operations Aggregate,

Without limiting the provisions hereof, in the event the Construction Manager maintains the foregoing insurance in limits greater than aforesaid, the Owner, the DOA and the City shall be included therein as additional insured to the full extent of all such insurance in accordance with all the terms and provisions hereof.

- 10.1.4 The Commercial General Liability, Automobile Liability and Excess/Umbrella policies shall include contractual liability, shall contain an appropriate cross-liability clause insuring Owner and the City against any loss or damage to Owner or the City or their property, respectively, resulting from any acts or omissions of Construction Manager, its officers, directors, employees, agents or Subcontractors at any tier, and shall name Owner and the City as additional insureds. The coverage provided to the additional insureds pursuant to this Article shall expressly provide that it is primary to, and non-contributory with, any insurance, whether primary, excess, contingent or on any other basis, maintained by Owner or the City (that is, Construction Manager's insurance shall exhaust vertically, and not share horizontally with any of the insurance carried by Owner or the City notwithstanding any case law to the contrary). In addition, the Commercial General Liability policy shall contain completed operations coverage throughout the greater of any applicable statutes or three years following Substantial Completion. The Workers' Compensation policy shall provide that Construction Manager and its insurers agree to waive all rights of subrogation against Owner and the City. All policies shall remain in full force and effect for at least thirty (30) days after Owner or the City receive written notice of cancellation, termination or material modification. All liability insurance policies shall contain an endorsement providing, and the applicable certificates of insurance shall note, that the insurance carrier shall not, without obtaining express advance permission from the General Counsel of the City, raise any defense involving in any way the jurisdiction of the tribunal over the person of the City, the immunity of the City, its commissioners, officers, agents or employees, the governmental nature of the City or the provisions of any statutes respecting suits against the City. Products/Completed Operations Extension shall be for a term of Ten (10) years or the Statue of Repose, whichever is less.

- 10.15 The Professional Liability policy shall include:

- .1 Any material change in limits, coverages or loss of aggregate limit due to outstanding claims must be reported to Owner within thirty (30) days of any such event.

- .2 Such policy shall be endorsed to provide written notice to Owner of cancellation or non-renewal thirty (30) days prior to the effective date of such policy changes.
- .3 The policy shall be endorsed to include the Owner and the City as Indemnified Parties.
- .4 The policy shall be effective and maintained through the entirety of the contract, without interruption, and for a minimum period of five (5) years after all services required to be performed under the Contract have been completed.
- .5 The policy shall contain no policy language that would exclude coverage for claims arising out of mold, asbestos or silica that are the result of Construction Manager's, or its Subcontractors', performance or failure to perform services under this Contract.
- .6 The policy shall have a retroactive coverage date that precedes the commencement of any services to be performed under this Contract.
- .7 The policy shall contain no policy language that would exclude coverage for claims arising from services within the means, methods and techniques of construction.
- .8 The policy shall contain no policy language that would exclude pollution related claims.

If at any time, any of the insurance policies shall be or become unsatisfactory to Owner or the the City as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Owner or the the City, the Construction Manager shall promptly obtain a new and satisfactory policy in replacement, Owner and the the City agreeing not to act unreasonably hereunder.

The Construction Manager shall be solely responsible for any deductibles, self-insured retentions or claims handling fees arising from any insurance required to be carried by Construction Manager hereunder.

## **10.2 CONSTRUCTION MANAGER'S BONDS**

10.2.1 The Construction Manager shall, before beginning the Work, provide a 100% Performance Bond and a 100% Labor and Material Payment Bond, along with a copy of the invoice, each in an amount equal to the Contract Price (as defined in Paragraph 8.1.1) or, if no FGMP has been approved by the Owner at that time, in an amount equal to the IGMP, which amounts shall be increased in the event of any Work Authorizations and Change Orders which increase the Contract Price as well as when the FGMP Change Order has been executed by the Owner and the Construction Manager. Such bonds shall be issued by a surety company satisfactory to the City and Owner and authorized to issue surety bonds in the State of Georgia and that appears on the latest US Treasury Circular 570 ("T-List") and has a current AM Best Rating of "A" or better. The Performance Bond and the Labor and Material Payment Bond each shall name the Owner and the City as dual-obligee and shall comply with the requirements of the City, including, without limitation, (a) being in a form satisfactory to the City, the approval of which shall not be unreasonably withheld, (b) being provided prior to the commencement of Construction Service, (c) containing language pursuant to which the surety agrees that no modification, change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed under it will in any way affect the surety's obligation under the bond, and that notice of any such modification, change, extension of time, alteration or addition to the terms of the Agreement or the Work are waived by the surety, and (d) staying in effect through the period of performance, including the period of warranty, and as required under applicable law. An agent of the surety residing in the State of Georgia must execute the bonds. The surety must appoint an agent for service in Atlanta, Georgia upon whom all notices must be shown on each bond. The person executing the bonds on behalf of the surety must file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney, and certified to by an official of said surety.

10.2.2 If at any time after the execution of the Agreement, Owner or the City reasonably considers the surety on any bonds to be unsatisfactory, such party shall have the right to require new bonds with a surety satisfactory to such party within fifteen (15) days after notice to Construction Manager that the surety on the bonds is unsatisfactory. If the Construction Manager defaults on its obligations concerning the bonds, the

Agreement may be suspended, and until such time as replacement bonds are provided all payment of monies due the Construction Manager under the Agreement may be withheld.

### **10.3 BUILDER'S RISK INSURANCE**

10.3.1 Construction Manager shall, at its expense, effect and maintain "all risk" Builder's Risk Insurance in an amount sufficient to cover the Work being performed under any phase of the Project on a replacement cost basis, including, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, terrorism (if available on commercially reasonable terms), earthquake, flood, windstorm, falsework, testing and startup, on-site materials and supplies intended for permanent use in the facilities, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Construction Manager's services and expenses required as a result of such insured loss, said insurance to cover the interests of the parties hereto and to be evidenced by an appropriate Certificate of Insurance, non-cancelable without prior written notice to the City and the Owner, a copy of which shall be furnished to the Owner and the City, prior to commencement of construction. Owner, the City, Subcontractors and sub-Subcontractors shall be added as named insureds. In the event of a loss, all insurance proceeds shall be payable to the Owner and used for repair or rebuilding.

10.3.2 The Builder's Risk Insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

## **ARTICLE 11 – CHANGES IN THE WORK**

### **11.1 CHANGE ORDERS**

11.1.1 Change Orders shall be issued only as provided in the Contract Documents.

## **ARTICLE 12 – UNCOVERING AND CORRECTION OF WORK**

### **12.1 UNCOVERING OF WORK**

12.1.1 If any portion of the Work should be covered contrary to the request of the Architect or the Program Manager or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect or the Program Manager, be uncovered for the Architect's observation and shall be replaced at the Construction Manager's expense.

12.1.2 If any other portion of the Work has been covered which the Architect or the Program Manager has not specifically requested to observe prior to being covered, the Architect may request to see such Work and such Work shall be uncovered by the Construction Manager. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to and paid by the Owner. In addition, an appropriate adjustment may be made to the Construction Schedule. If such Work be found not in accordance with the Contract Documents, the Construction Manager shall pay such costs unless it be found that this condition was caused by the Owner or a separate Contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs and the Construction Schedule may be adjusted accordingly.

### **12.2 CORRECTION OF WORK**

12.2.1 The Construction Manager shall promptly correct all Work rejected by the Owner, the Program Manager, or the Architect as defective or as failing to conform to the Contract Documents observed before Final Completion and whether or not fabricated, installed or completed. The Construction Manager shall bear all costs of correcting such rejected Work, including reasonable compensation for the Architect's additional services made necessary thereby.

- 12.2.2 If, within one year after the Date of Substantial Completion of the Work, or designated portion thereof, or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, or within one year of the termination of the Agreement pursuant to Article 13 herein, any of the Work is found to be defective or not in accordance with the Contract Documents, the Construction Manager shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Construction Manager a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.
- 12.2.3 The Construction Manager shall remove from the site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraphs 4.5.1 and 12.2.2, unless removal is waived by the Owner.
- 12.2.4 If the Construction Manager fails to correct defective or nonconforming Work as provided in Subparagraphs 4.5.1 and 12.2.2, the Owner may correct it in accordance with Paragraph 3.4.
- 12.2.5 If the Construction Manager does not proceed with the correction of such defective or nonconforming Work within the time fixed by written notice under the Contract Documents, the Owner may remove it and may store the materials or equipment at the expense of the Construction Manager. If the Construction Manager does not pay the cost of such removal and storage within ten days thereafter, the Owner may upon ten additional days' written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Construction Manager, including compensation for the Architect's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Construction Manager should have borne, the difference shall be charged to the Construction Manager and an appropriate Change Order or Construction Change Directive shall be issued. If the payments then or thereafter due the Construction Manager are not sufficient to cover such amount, the Construction Manager shall pay the difference to the Owner.
- 12.2.6 The Construction Manager shall bear the cost of making good all work of the Owner, or separate Contractors destroyed or damaged by such correction or removal.
- 12.2.7 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Construction Manager might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Construction Manager to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to the Construction Manager's obligations other than specifically to correct the Work.

### **12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

- 12.3.1 If the Owner prefers to accept defective or non-conforming Work, the Owner may do so instead of requiring its removal and correction, in which case a Change Order or Construction Change Directive will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 – SUSPENSION AND TERMINATION OF THE CONTRACT**

- 13.1 [Intentionally omitted.]

### **13.2 SUSPENSION AND TERMINATION BY THE CONSTRUCTION MANAGER**

If the Owner fails to pay the Construction Manager, through no fault of the Construction Manager, within the time payment should have been made as provided in this Agreement, the Construction Manager shall provide



written notice to the Owner of such non-payment. The Owner shall have a period of ten (10) days from its receipt of such notice to make payment. If the Owner fails to so act with such ten (10) day period, the Construction Manager may cease work until payment has been received. If such period of suspension of work lasts thirty (30) days without payment from the Owner, the Construction Manager shall provide written notice to the Owner of its intention to terminate this Agreement for non-payment. The Owner shall have a period of ten (10) days from its receipt of such notice to make payment to the Construction Manager. If the Owner makes such payment, the Construction Manager shall resume Work and the Contract Price and Contract Time shall be equitably adjusted to account for the additional costs and time made necessary by reason of the suspension, subject to the limitations of other provisions of the Contract Documents. If the Owner fails to make payment within the ten (10) day period, the Construction Manager may terminate this Agreement for default and recover from the Owner payment for Work executed and for proven loss with respect to labor, materials and equipment, its Fee on same and for profit under this Agreement. It is expressly understood that the above-described time periods and notice requirements are an express condition precedent to the Construction Manager's right to suspend and terminate work under this Agreement.

### **13.3 TERMINATION BY THE OWNER FOR CONVENIENCE**

This Agreement may be terminated by the Owner solely for its convenience upon seven (7) days written notice to the Construction Manager, without regard to cause and without regard to any failure to perform by the Construction Manager.

#### **13.3.1 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Construction Manager shall:**

1. Cease operations as directed by the Owner in the Notice;
2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
3. Terminate all existing Subcontractors and purchase orders and enter into no further subcontract or purchase orders for the Work.

#### **13.3.2 Notwithstanding any other provision in the Contract Documents to the contrary, in case of such termination for the Owner's convenience, the Owner shall pay the Construction Manager for Work actually performed and in place prior to the date of termination in accordance with the most recent approved schedule of values, together with the Construction Manager's Fee on such Work. For purposes of determining Work performed and in place prior to the date of termination, the Construction Manager shall be entitled to payment for demobilization, unused equipment and materials which cannot be returned, restocking fees for equipment and materials returned to a supplier or vendor (provided that the Construction Manager shall credit the Owner for the cost of the equipment and materials so returned), and reasonable costs incurred in the termination of any subcontract or purchase order. The Construction Manager shall use its best efforts to minimize such termination expenses. The Owner shall have no further liability to the Construction Manager, and the Construction Manager shall be entitled to no damages or recovery whatsoever in excess of any compensation earned to the time of notice of termination, nor shall it be entitled to prospective profits on Work not performed or other consequential or incidental damages.**

### **13.4 TERMINATION BY THE OWNER FOR CAUSE**

#### **13.4.1 If the Construction Manager is adjudged bankrupt, or if the Construction Manager makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Construction Manager refuses or fails to supply enough properly skilled workmen or proper materials, or if the Construction Manager fails to make prompt payment to Subcontractors or Suppliers for materials or labor in relation to a portion of the Work for which payment has been made to the Construction Manager (or for which payment would have been made but for the existence of a condition or conditions allowing the Owner to withhold payment under the Contract Documents), or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise materially violates any provision of the Contract Documents, then the Owner may, without prejudice to any right or remedy and after giving the Construction**

Manager and its surety, if any, seven (7) days written notice and opportunity to cure the default or violation, terminate the Contract for cause and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Construction Manager and may finish the Work by whatever method the Owner may deem expedient. In such case, the Construction Manager shall not be entitled to receive any further payment from the Owner until the Work is finished.

13.4.2 In the event of termination of the Contract by Owner for cause, if the cost of finishing the Work, including compensation for the Architect's and the Owner's representatives' additional services made necessary thereby, exceeds the unpaid balance of the Contract Price, the Construction Manager shall pay the difference to the Owner, and this obligation for payment shall survive the termination of the Contract.

13.4.3 In the event of termination of the Contract by Owner for cause, if the cost of finishing the Work, including compensation for the Architect's and the Owner's representatives' additional services made necessary thereby, is less than the unpaid balance of the Contract Price, the Owner shall pay to the Construction Manager the difference or the amount calculated pursuant to Paragraph 13.4.3.1, whichever is less, and this obligation shall survive the termination of this Agreement.

13.4.3.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination; add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination and subtract the aggregate of previous payments made by the Owner.

## **ARTICLE 14 – NONDISCRIMINATION, AFFIRMATIVE ACTION, NO CONFLICTS**

### **14.1 GENERAL REQUIREMENTS**

14.1.1 The Construction Manager shall not discriminate by segregation or otherwise against any employee or applicant for employment because of race, color, creed, national origin, sexual orientation, age or sex, and shall undertake affirmative action measures designed to guarantee and effectuate equal employment opportunity for all persons.

14.1.2 The Construction Manager shall provide information and reports requested by the Owner or the City pertaining to its obligations under this Paragraph, and will permit access to its facilities and any books, records, accounts or other sources of information which may be determined by the Owner or the City to affect the Construction Manager's obligation herein.

14.1.3 The Construction Manager shall comply with all federal and state laws and regulations and all City regulations pertaining to civil rights and equal opportunity, including executive orders and rules and regulations of appropriate federal and state agencies, unless otherwise exempt therein. The Construction Manager is responsible to actively maintain updated City and Owner requirements and to conform to the requirements accordingly.

### **14.2 CONFLICTS OF INTEREST**

14.2.1 The Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee or contract employee working solely for the Construction Manager or its consultants or subcontractors, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, corporation, individual or firm, other than a bona fide employee or contract employee working for the Construction Manager or its consultants or subcontractors, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Owner shall have the right to annul this Agreement without liability.

14.2.2 The Construction Manager and its consultants and subcontractors shall not solicit or accept compensation, work, a promise of future compensation or work, or other consideration in exchange for the Construction Manager's recommendation for the Owner's award of a professional services agreement, a construction contract, equipment or materials contract, or other service contracts for the Project. The Construction

Manager's or its consultants or subcontractors' failure to adhere to this requirement may result in termination of this Agreement and prosecution of the failing party under applicable civil and criminal statutes.

- 14.2.3 The Construction Manager shall not hire or employ, on either a full-time or part-time basis during the term of this Agreement, any person so long as such person shall be employed by the Owner or the City. The Construction Manager hereby certifies that this Agreement is made in good faith, without fraud, and without collusion of any kind with any other consultant for the same services, and that the Construction Manager is acting solely on its own behalf without connection with, or obligation to, any undisclosed person or firm and in full compliance with all applicable conflict of interest laws. If any officer, agent or employee of the Owner or the City has a financial interest in the Construction Manager, the Construction Manager hereby agrees that its representatives shall consult with Owner's legal representatives to learn what action shall be taken to comply with the applicable conflict of interest laws.
- 14.2.4 By execution of this Agreement, the Construction Manager hereby certifies and discloses that it and its consultants and subcontractors have no financial or other interest in the execution or outcome of the Project that is the subject of this Agreement, other than as reflected by this Agreement.
- 14.2.5 All conflict of interest matters arising during the term of this Agreement shall be handled in a manner consistent with the requirements of applicable state and federal law and the Construction Manager and its consultants and subcontractors shall conduct themselves at all times in a manner that will avoid any conflict of interest.

#### **14.3 COMPLIANCE WITH ADA AND OTHER DISABILITY ACCESS LAWS**

- 14.3.1 The Construction Manager agrees that, in the performance of its work, the Construction Manager shall comply, and shall cause its Subcontractors, agents, employees, to comply with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA") The Construction Manager shall be entitled to rely reasonably upon the Construction Documents as being in compliant with the ADA and other disability laws and shall have no liability to the Owner for the failure of the Construction Documents to comply with such laws.

#### **14.4 NONCOMPLIANCE**

- 14.4.1 The Construction Manager's material noncompliance with any of the provisions of this Article 14 shall constitute a material breach of this Agreement.
- 14.4.2 The Construction Manager shall indemnify and hold harmless the Owner from any claims and demands of third persons resulting from the Construction Manager's noncompliance with any of the provisions of this Article 14.

#### **ARTICLE 15 – COMPLIANCE PROGRAM**

- 15.0 Construction Manager shall institute and maintain an effective compliance program to ensure that the means and methods employed in the performance of the Work comply with all applicable laws, rules, regulations and procedures. Such program shall, at a minimum, include the following components:
- (a) Instituting standards and procedures that are reasonably capable of reducing the prospect of noncompliance.
  - (b) Assignment of a high-level person or persons to overall responsibility for overseeing compliance with such standards and procedures.
  - (c) Exercising due care in making assignments so as to avoid delegating compliance responsibility to individuals whom the organization knows, or should know, have a propensity to engage in illegal activities.

- (d) Communication of compliance standards and procedures by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required.
- (e) Establishing monitoring and auditing systems and having in place and publicizing a reporting system whereby employees and other agents can report events of noncompliance without fear of retribution.
- (f) Enforcing standards through appropriate mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect events of noncompliance.
- (g) Taking all reasonable steps to respond appropriately to events of noncompliance and preventing further similar events of noncompliance—including any necessary modification of the compliance program.

Owner may audit and review Construction Manager's compliance program at any time.

## **ARTICLE 16 – SECURITY**

16.1 Construction Manager agrees that in the performance of the Work pursuant to this Agreement it is of paramount importance to maintain the security and safety of Owner's customers, the general public and all personnel employed at the Project Site and to safeguard the security and integrity of all personal, public and Airport property. In this regard, Construction Manager agrees, in accordance with applicable laws, to take those actions necessary to accomplish this purpose, including but not limited to the actions outlined in this Article 16.

16.2 Employment and Access Investigations.


- (a) Construction Manager warrants and agrees that it has performed and will continue to perform all employment and access investigations required by and in accordance with federal law and Delta's Aircraft Operator Standard Security Program as approved by the Transportation Security Administration (the "TSA") as in effect from time to time, including, without limitation, the requirements of 49 U.S.C. § 44936 and the TSA's regulations promulgated pursuant thereto at 49 C.F.R. Parts 1542 and 1544, with respect to all persons hired or utilized by Contractor to perform the Work. Such employment and access investigations may include without limitation employment histories and verifications, verifications of identity, and criminal history records checks as and to the extent required by federal law.
- (b) For all persons Construction Manager has hired or will hire who may operate a motor vehicle on the Airport Operating Area (the "AOA"), Construction Manager will also conduct a five year check of the person's state motor vehicle record.
- (c) Required employment and access investigations shall be completed for all persons prior to Construction Manager allowing such persons "unescorted access authority," "authority to perform screening functions," or "authority to perform checked baggage or cargo functions" (as such terms are defined in 49 C.F.R. Part 1544), prior to Construction Manager allowing such persons to work in the sterile area of the Airport, and otherwise as required by and in accordance with federal law, Delta's Aircraft Operator Standard Security Program and the City's rules and regulations (said authority being referred to herein as "Special Security Authority"). Required motor vehicle record checks shall be completed for all persons prior to Construction Manager allowing such persons to operate motor vehicles on the AOA.

16.3 Drug and Alcohol Testing Program. Construction Manager warrants and agrees that, on or before the effective date of this Agreement and to the extent required by applicable laws, regulations and orders, it will establish and thereafter maintain a drug and alcohol testing program for those personnel, if so employed by the Construction Manager, who perform safety-sensitive functions (as defined in 14 C.F.R. Part 121, Appendices I and J). Construction Manager agrees that such program, including without limitation the timing of placement of Construction Manager's personnel in safety-sensitive functions, will comply with all requirements set forth by the Department of Transportation (the "DOT"), the FAA, and any other federal agency which promulgates applicable rules or regulations concerning such testing, including without limitation DOT's Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 C.F.R. Part 40 ("DOT's Drug and Alcohol Prevention Program"), and FAA's requirements set forth in 14 C.F.R. Part 121, Appendices I and J. To the


extent permitted by law, if Construction Manager employs personnel who are not covered by DOT's Drug and Alcohol Prevention Program but who will have Special Security Authority, such personnel shall be subject to pre-employment drug testing by Construction Manager for the same substances and in accordance with the same procedures as required by the DOT's Drug and Alcohol Prevention Program.

- 16.4 Additional Requirements. Construction Manager also agrees to undertake whatever other measures are necessary to comply with security, drug and alcohol testing, record-keeping, and other requirements appropriate to the areas to which Construction Manager has access or to the Work that are imposed from time to time by public agencies such as the TSA, DOT, FAA, the United States Postal Service, the United States Customs Service, and the City.
- 16.5 Audit of Employment Records. Construction Manager shall keep at the Airport, full and detailed records demonstrating its compliance with this Article 16 as to each employee employed at the Project Site and shall maintain and preserve such records without additional compensation therefor for a period of three (3) years after termination or expiration of this Agreement. Owner shall have the right, but not the duty, to conduct such audits of Construction Manager's employment records as it deems prudent to ensure Construction Manager's compliance with this Article 16.
- 16.6 Return of Credentials. Construction Manager acknowledges the importance of maintaining control over all access/identification media and credentials issued to Construction Manager's employees allowing such employees Special Security Authority or other special access authority granted by the City or Delta ("Credentials"). Construction Manager shall maintain by means acceptable to Delta a current listing of all of Construction Manager's employees, all Subcontractor employees and all other individuals employed on the Project Site by or through Construction Manager who require Credentials, and the type of Credentials issued to such individuals. Construction Manager shall, within the time periods prescribed by law and by the issuing authority and by means acceptable to the issuing authority, (i) return to the issuing authority all Credentials issued to such individuals upon termination of employment or disqualification for Credentials of such individuals, and (ii) report to the issuing authority all lost, stolen and unaccounted for Credentials. Construction Manager shall notify Delta's Station Manager/Director at the Airport or his designee in writing (x) of such termination or disqualification of such individuals immediately after such termination or disqualification, (y) of the return of Credentials to the issuing authority simultaneously with such return, and (z) of such lost, stolen and unaccounted for Credentials simultaneously with such report to the issuing authority.


**[END OF GENERAL CONDITIONS]**

CONSTRUCTION MANAGEMENT COST ALLOCATION ATL Airside Modernization 		CMR Fee		Cost of the Work (IGMP)		With A/E Services	Owner	Estimator	Add'l. Services	Not Required	Notes
		Pre-Const. Svcs.	Const. Svcs.	General Cond.	Direct Cost of Work						
PRE-CONSTRUCTION											
1	Architectural Consultant Selection										
2	Structural Consultant Selection										
3	Mechanical Consultant Selection										
4	Electrical Consultant Selection										
5	Special Consultant Selection										
6	Surveyor Selection										
7	Commissioning Agent										
8	Review Design Concepts										
9	Develop Bid Packages										
10	Site Use Recommendations										
11	Material Selection Recommendations										
12	Building Systems Recommendations										
13	Bldg Equipment Recommendations (Movable)										
14	Bldg Equipment Recommendations (Fixed)										
15	Construction Feasibility Recommendations										
16	Construction Scheduling Recommendations										
17	Phase Package Recommendations										
18	Life Cycle Costing Analysis										
19	Informal Value Engineering										
20	Formal Value Engineering										
21	Energy Use Analysis & Recommendations										
22	Prepare Preliminary Construction Cost Estimate										
23	Prelim. Cash Flow Projections										
24	Gen. Project Coordination/Attend All Meetings										
25	Labor Availability Review (Subcontractors)										
26	Material Availability Review										
27	Equipment Availability Review										
28	Contractor Availability Review										
29	Total Project Cost Budget										
30	Construction Cost Budget										
31	Construction Cost Range Estimates										
32	Preliminary Cost Model										
33	Preliminary GMP Estimate										
34	Updates to GMP Estimate										
35	GMP Estimate										
36	Approve GMP Estimate										
37	Cash Flow Projections										
38	Material Surveys										
39	Trade Contractor Estimates										
40	Change Order Estimates										
41	Set-Up Cost Accounting										
42	Set-Up Reporting Methods										
43	Set-Up Payment Procedure										
44	Set-Up Change Order Procedure										

Xp = Primary  
Xs = Secondary


<b>CONSTRUCTION MANAGEMENT COST ALLOCATION</b> <b>ATL Airside Modernization</b> 		CMR Fee		Cost of the Work (IGMP)		With A/E Services	Owner	Estimator	Add'l. Services	Not Required	Notes
		Pre-Const. Svcs.	Const. Svcs.	General Cond.	Direct Cost of Work						
45	Monthly Project Status Report										
46	Project Schedule (CPM/Bar Chart)										
47	Preconstruction Activity Sched (CPM/Bar Chart)										
48	Construction Activity Sched (CPM/Bar Chart)										
49	Develop Phasing & Site Logistics Plan										
50	Prepare ATL DOA required documents.										
51	Submittal Schedule & Procedure										
52	Mock-up Schedule & Procedure										
53	CPM Schedule & Weekly Updates										
54	Short-Interval Schedules										
55	Occupancy Schedule										
56	Set Prequalification Criteria										
57	Recommend Subcontractor Selection Methods										
58	Recommend Subcontractor Award Methods										
59	Develop Subcontractor Interest										
60	Prepare Select Bidders List(s)										
61	Prepare Bidding Schedules										
62	Approve Bidders List(s)										
63	Conduct Pre-Bid Conference & Issue Plans										
64	Receive Bids										
65	Analyze Bids										
66	Comparison of Bids to Preliminary GMP Estimate										
67	Recommend Award										
68	Approve Award										
69	Determine Local Manpower Availability										
70	Prepare Contracts										
71	Approve Contracts										
72	Award Contracts										
73	Supplier & Subcontractor Review										
74	Prepare Change Orders										
75	Verify Correctness of Quantities & Prices of all CO's										
76	Approve Change Orders										
77	Coordinate Owner-Supplied Equipment										
78	Issue Change Orders										
79	Feasibility Review & Recommendations										
80	Responsibility For:										
81	Safety Precautions										
82	Safety Programs										
83	Temporary Facilities										
84	Identify Long-Lead Items & Time Requirement for Procurement										
85	Obtain Building Permits										
86	Obtain Agency Approvals										
<b>MAIN OFFICE - STAFFING</b>											
1	Corporate Executive(s)										

Xp = Primary  
Xs = Secondary


CONSTRUCTION MANAGEMENT COST ALLOCATION ATL Airside Modernization 		CMR Fee		Cost of the Work (IGMP)		With A/E Services	Owner	Estimator	Add'l. Services	Not Required	Notes
		Pre-Const. Svcs.	Const. Svcs.	General Cond.	Direct Cost of Work						
2	Principal(s) in Charge										
3	Project Executive(s)										
4	Project Manager(s) @ office										
5	Project Engineer(s) @ office										
6	Mechanical & Electrical Coordinator(s) @ office										
7	Production Engineering @ office										
8	Systems Engineering @ office										
9	CADD Drafter(s) @ office										
10	Document Checkers @ office										
11	Safety Officer(s) @ office										
12	EEO Officer(s) @ office										
13	Secretarial @ office										
14	Preconstruction Services @ office										
15	Estimating @ office										
16	Accounting @ office										
17	Data Processing @ office										
18	Scheduling @ office										
19	Purchasing @ office										
20	Basic Legal Services (General & Proj. Specific)										
21	Subcontractor Cost Consultants										
22	Home Office Operating Expenses										
30	Benefits for Above										
31	Vacations for Above										
JOBSITE - STAFFING											
1	Project Manager(s) on site-Full time										
2	Project Superintendent(s) on site-Full time										
3	Assistant Superintendent(s) on site-Full time										
4	Project Engineers(s) on site-Full time										
5	Mechanical & Electrical Coordinator(s) on site-Full time										
6	Scheduling Engineer(s) on site-Full time										
7	Project Administrative Support on site										
8	Clerk-Typist(s) on site										
9	Safety Engineer(s) on site										
10	Cost Engineer(s) on site										
11	EEO Officer(s) on site										
12	Accounting on site										
13	Data Processing on site										
14	Operator On-Site Training										
15	Prepare Operation Manuals										
16	Prepare Maintenance Manuals										
17	Prepare Preventive Maintenance Manual										
18	Prepare & Submit QC Plan for Construction										
19	Approve QC Plan for Construction										
20	Implement QC Plan for Construction										
21	Prepare Punch List(s)										
22	Approve Punch List(s)										

Xp = Primary  
Xs = Secondary




CONSTRUCTION MANAGEMENT COST ALLOCATION ATL Airside Modernization 		CMR Fee		Cost of the Work (IGMP)		With A/E Services	Owner	Estimator	Add'l. Services	Not Required	Notes
		Pre-Const. Svcs.	Const. Svcs.	General Cond.	Direct Cost of Work						
23	Implement Corrective Work on Punch List										
24	Benefits for Above										
25	Vacations for Above										
<b>FIELD OFFICES &amp; EXPENSES</b>											
1	Temporary Field Office Facility										
2	Field Office Furniture										
3	Field Office Copier										
4	Field Office Fax Machine										
5	Field Office Computer & Software										
6	Field Office Supplies										
7	Arch/Engr. Temporary Office										
8	Storage Trailers										
9	Storage Sheds										
10	Temp. Telephone Install Eqmt. & Monthly Fee										
11	Telephone Expense (Long Distance Charges)										
12	Temporary Field Office Heating										
13	Cost Study Drawings & Specifications										
14	Bid Package Drawings & Specifications										
15	Construction Drawings & Specifications										
16	Sub/Supplier Prequalification Forms										
17	Bidding Instructions & Forms										
18	Postage & Express Costs: Project Jobsite Related										
19	Subcontract Agreements										
20	Shop Drawing Printing										
21	Copier Expense (Miscellaneous) at Jobsite										
22	As-Built Documents (Drafting)										
23	As-Built Documents (Printing)										
24	Maintenance Manuals (From Subs)										
25	Operation Manuals (From Subs)										
26	Estimating Forms										
27	Schedule Report Forms										
28	Accounting Forms										
29	Field Reporting Forms										
30	Cost Reporting Forms										
31	Special Forms										
<b>TEMPORARY UTILITIES</b>											
1	Temporary Electrical Service/Distribution										
2	Temporary Electrical Wiring & Lighting										
3	Lightbulbs & Temp. Electrical maintenance										
4	Electrical Power Consumption Expense										
5	Water Expense for Service/Distribution										
6	Temporary Water Consumption Expense										
7	Water Expense for Site Grading & Compaction										
8	Temporary Gas Service/Distribution										
9	Temporary Heating Service										
10	Heating Energy Charges										
11	Temporary Utility Company Service Charges										
12	Heater Rental										


Xp = Primary  
Xs = Secondary

CONSTRUCTION MANAGEMENT COST ALLOCATION ATL Airside Modernization 		CMR Fee		Cost of the Work (IGMP)		With A/E Services	Owner	Estimator	Add'l. Services	Not Required	Notes
		Pre-Const. Svcs.	Const. Svcs.	General Cond.	Direct Cost of Work						
13	Maintenance Cost (Permanent Heat System)										
14	Warranty Cost (Permanent Heat System)										
15	Filter Change (Permanent Heat System)										
<b>TEMPORARY CONDITIONS</b>											
1	Project Signs										
2	Directional/Warning Signs										
3	Boards										
4	Waterboy/Ice/Cups										
5	Temporary Toilets										
6	Construction Fencing										
7	Barricades										
8	Security Guard Service										
9	Safety Equipment										
10	First Aid Supplies										
11	Handrails/Toe Boards/Opening Protection										
12	Safety Nets/Railings										
13	Temporary Enclosures (Building)										
14	Temporary Stairs										
15	Fire Extinguisher and Protection										
16	Site Maintenance										
17	Temporary Parking Lots										
18	Temporary Shuttle Service										
19	Flagman/Traffic Control										
20	Dust Controls										
21	Temporary Erosion Control										
22	Dewatering/Remove Snow & Ice (Site)										
23	Remove Snow & Ice (Building)										
24	Temporary Enclosures (Building)										
25	Temporary Weather Protection for Sub Trades										
26	Temporary Heating for Sub Trades										
27	Piping Cost in Building (Permanent Heat Sys)										
28	Fuel Cost for Heating (Permanent Heat Sys)										
29	Power Cost for Heating (Permanent Heat Sys)										
<b>EQUIPMENT</b>											
1	Automobile & Fuel (Project Manager)										
2	Pick-Up Truck & Fuel (Superintendent)										
3	Flatbed Truck & Fuel										
4	Water Truck & Fuel										
5	Air Compressor & Fuel										
6	Generator & Fuel										
7	Hoisting Equipment & Fuel										
8	2-Way Radio Equipment										
9	Small Tools										

Xp = Primary  
Xs = Secondary

<b>CONSTRUCTION MANAGEMENT COST ALLOCATION</b> <b>ATL Airside Modernization</b> 		CMR Fee		Cost of the Work (IGMP)		With A/E Services	Owner	Estimator	Add'l. Services	Not Required	Notes
		Pre-Const. Svcs.	Const. Svcs.	General Cond.	Direct Cost of Work						
10	Expendable Supplies										
<b>TRAVEL</b>											
1	Ground Transportation (If Required)										
2	Airline Transportation (If Required)										
3	Meals & Lodging (If Required)										
4	Moving & Relocation Expense (If Required)										
5	Subsistence Costs										
<b>ENGINEERING/TESTING</b>											
1	Engineering & Layout (initial) on site										
2	Field Engineer (Line & Grade)										
3	Testing & Inspections										
4	Special Inspection Consultants										
5	Special Testing Consultants										
6	Concrete Testing										
7	Masonry Testing										
8	Compaction Testing										
9	Welding Testing										
10	Pier Inspection/Testing										
11	Soils Investigations										
12	Special Testing Services										
13	Warranty Inspections Coordination										
14	Air & Water Balancing										
15	Drug Testing & Screening (Field Personnel)										
<b>CLEAN-UP</b>											
1	Daily Clean-Up										
2	Final Clean-Up										
3	Glass Cleaning										
4	Debris Hauling/Removal										
5	Trash Dumpsters										
6	Dump Permits & Fees										
<b>SIGNS/PHOTOGRAPHS</b>											
1	Project Photographs										
<b>OTHER</b>											
1	Builder's Risk Insurance										
2	Special Coverage Insurance - Earthquake										
3	Special Coverage Insurance - Flood										
4	General Liability Insurance										
5	Umbrella Liability Insurance										
6	Professional Liability Insurance										
7	Workman's Compensation Insurance										

Xp = Primary  
Xs = Secondary

<b>CONSTRUCTION MANAGEMENT COST ALLOCATION</b> <b>ATL Airside Modernization</b> 		CMR Fee		Cost of the Work (IGMP)		With A/E Services	Owner	Estimator	Add'l. Services	Not Required	Notes
		Pre-Const. Svcs.	Const. Svcs.	General Cond.	Direct Cost of Work						
8	FICA Insurance										
9	Federal Unemployment Insurance										
10	State Unemployment Insurance										
11	Performance Bond										
12	Payment Bond										
13	Subcontractor & Supplier Bonds										
14	Warranty Bond Costs										
15	Coord. Of and Compliance with Insurance Cov.										
16	Foundation Permit										
17	Superstructure Permit										
18	Building Permit (General)										
19	Mechanical Building Permit										
20	Electrical Building Permit										
21	Plan Check Fees										
22	Street Use Permit										
23	Curb & Gutter Permit										
24	Sidewalk Permit										
25	Landscape Permit										
26	Street/Curb Design Charge										
27	Sign Permits										
28	Parking Fees										
29	Utility Development Fees										
30	Power Service Charge										
31	Water Service Charge										
32	Gas Service Charge										
33	Water Tap Fee										
34	Sanitary Tap Fee										
35	Storm Tap Fee										
36	Special Tap Fees										
37	Contractor's Licenses										
38	Zoning Fees/Consultants										
39	Construction Equipment Licenses										
40	Construction Equipment Permits										
41	Storage Yard Rental										
42	Parking Lot Rentals										

Xp = Primary  
Xs = Secondary



CITY OF ATLANTA  
DEPT. OF PROCUREMENT

2015 NOV -5 PM 3:53

## CITY OF ATLANTA

SUITE 1700  
55 TRINITY AVENUE, SW  
ATLANTA, GA 30303  
(404) 330-6010 Fax: (404) 658-7359  
Internet Home Page: [www.atlantaga.gov](http://www.atlantaga.gov)

Kasim Reed  
Mayor

OFFICE OF  
CONTRACT COMPLIANCE  
Larry Scott  
Director  
[L.Scott@atlantaga.gov](mailto:L.Scott@atlantaga.gov)

## MEMORANDUM

TO: Adam L. Smith, Chief Procurement Officer  
Department of Procurement

FROM: Larry Scott, Director *L.S.*  
Mayor's Office of Contract Compliance

RE: **EBO Bid Documents for Project No.: FC-8234-B, Central Passenger Terminal Complex (CPTC) Modernization, Airside Package 2**

DATE: **November 4, 2015**

---

The EBO bid documents with project specific goal for Project No.: **FC-8234-B, Central Passenger Terminal Complex (CPTC) Modernization, Airside Package 2** enclosed.

The entire OCC package, which includes the project specific goal for the above referenced contract, must be included in the bid documents. Please note that the enclosed package is solely for this project.

If there are questions, please contact Alberto Aponte at (404) 330-6012.

cc: File,  
Les Page, DOP



## CITY OF ATLANTA

Kasim Reed  
Mayor

SUITE 1700  
55 TRINITY AVENUE, SW  
ATLANTA, GA 30303  
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OFFICE OF  
CONTRACT COMPLIANCE  
Larry Scott  
Director  
[L.Scott@atlantaga.gov](mailto:L.Scott@atlantaga.gov)

**November 4, 2015**

**RE: Project No.: FC-8234-B, Central Passenger Terminal Complex (CPTC)  
Modernization, Airside Package 2**

Dear Prospective City of Atlanta Bidder:

The Office of Contract Compliance information is an integral part of every City of Atlanta bid. All Bidders are required to make efforts to ensure that businesses are not discriminated against on the basis of their race, ethnicity or gender, and to demonstrate compliance with these program requirements at or prior to the time of Bid opening, or upon request by OCC. Bidders are required to ensure that prospective subcontractors, vendors, suppliers and other potential participants are not denied opportunities to compete for work on a City contract on the basis of their race, ethnicity, or gender, and must afford all firms, including those owned by racial or ethnic minorities and women, opportunities to participate in the performance of the business of the City to the extent of their availability, capacity and willingness to compete. Please read all of the information very carefully. Pay close attention to the specific goal of minority and female business enterprises for this project and the EBO program reminders listed on page 6.

If you have any questions about the information included in this section of the solicitation, please contact the City of Atlanta Office of Contract Compliance at (404) 330-6010.

**The City of Atlanta looks forward to the opportunity to do business with your company.**

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## **CITY OF ATLANTA**

### **EQUAL BUSINESS OPPORTUNITY EQUAL EMPLOYMENT OPPORTUNITY**

#### **POLICY STATEMENT**

It is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City. The City must ensure that firms seeking to participate in contracting and procurement activities with the City are not prevented from doing so on the basis of the race or gender of their owners. The City is committed to ensuring that it is not a passive participant in any private scheme of discrimination. To ensure that businesses are not discriminated against with regard to prime contracting, subcontracting or other partnering opportunities with the City, the City has developed an Equal Business Opportunity (EBO) Program. It is also the policy of the City of Atlanta to actively promote equal employment opportunities for minority and female workers and prohibit discrimination based upon race, religion, color, sex, national origin, marital status, physical handicap or sexual orientation through the City's Equal Employment Opportunity (EEO) Program. The purpose of the Equal Business Opportunity and Equal Employment Opportunity Programs is to mitigate the present and ongoing effects of the past and present discrimination against women and minority owned businesses and women and minority workers so that opportunity, regardless of race or gender, will become institutionalized in the Atlanta marketplace. It is important to note that all bidders, without exception, including minority and female owned business enterprises, must comply with the City of Atlanta's EBO and EEO Program requirements. Goals for minority and female business enterprises are set for this project on page 6.



## **Implementation of EBO Policy**

The Office of Contract Compliance will review information submitted by Bidders pertaining to efforts to promote opportunities for diverse businesses, including M/FBEs, to compete for business as subcontractors and/or Suppliers. A Bidder is eligible for award of a City contract upon a finding by OCC that the Bidder has engaged in, and provided with its bid submission documentation of, efforts to ensure that its process of soliciting, evaluating and awarding subcontracts, placing orders, and partnering with other companies has been non-discriminatory. To assist prime contractors in this effort, the Office of Contract Compliance has set forth in this solicitation document the M/FBEs goals within the relevant NAICS Codes, for this Project.

For subcontracting, the Subcontractor Project Plan must include all subcontractors to be utilized on the project, detail the services to be performed, the dollar value of the work to be performed by each subcontractor, and the City of Atlanta M/FBE certification number and supplier id number.

For Suppliers, the Subcontractor Project Plan must include all suppliers to be utilized on the project, the supplies to be provided, including the dollar value of the supplies being provided and the City of Atlanta M/FBE certification number and supplier id number.

## **Determination of Non-discrimination During Bid Process**

No Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the non-discrimination requirements of section 2-1448 on such Eligible Project. Accordingly, each Bidder shall submit with each Bid the following

1. Covenant of Non Discrimination. Each Bidder shall submit with her/his Bid a Covenant of Non-Discrimination which is set forth herein as Exhibit EBO1.
2. Outreach efforts documentation. Each bidder shall submit with her/his bid written documentation demonstrating the bidder's outreach efforts to identify, contact, contract with, or utilize businesses, including certified MFBES and SBES, as subcontractors or suppliers on the contract. This information shall be set forth on Exhibit EBO2, which is included herein.
3. Subcontractor project plan. Each bidder shall submit with her/his bid a completed and signed subcontractor project plan, in a form approved and provided by the office of contract compliance, which lists the name, address, telephone number and contact person of each subcontractor or other business to be used in the contract, the NAICS Code and the type of work or service each business will perform, the dollar value of the work and the scope of work, the ownership of each business by race and gender, if applicable the AABE, APABE, FBE, or HABE certification number of each business, and any other information requested by the office of contract compliance. In order for the office of contract compliance to officially consider a firm to be an MFBE, the MFBE firm must be certified by or have a certification application pending with the office of contract compliance prior to the bidder's submission of the bid. The subcontractor project plan shall not be changed or altered after approval of the plan and award of the contract without the written approval of the director of the office of contract compliance. A written letter to the director of the office of contract compliance requesting approval to

change the subcontractor project plan must be submitted prior to any change in the plan or termination of an MFBE's contract.

### **OCC Review of Bidder Submissions**

The Office of Contract Compliance shall determine whether a Bidder has satisfied the non-discrimination requirements of section 2-1448 based on its review of the Covenant of Non Discrimination, the Outreach Efforts Documentation, the Subcontractor Project Plan, and its review of other relevant facts and circumstances, including complaints received as part of the bid process. In reviewing the documents submitted by a Bidder to determine whether the Bidder has satisfied the non-discriminatory practices requirement of this section, the Office of Contract Compliance will consider, among other things, the total project dollars subcontracted to or expended for services performed by other businesses, including certified MFBEs, whether such businesses perform Commercially Useful Functions in the work of the contract based upon standard industry trade practices, whether any amounts paid to Supplier businesses are for goods customarily and ordinarily used based upon standard industry trade practices, and the availability of certified MFBEs within the relevant NAICS Codes for such Eligible Project.

(a) **Receipt of Complaint of Discrimination in the Bid Process**

The Office of Contract Compliance shall accept complaints of alleged discrimination during the bid process regarding any participant in the bid process. Where the complaint of discrimination is specific to the procurement which is under consideration by the city, the office of contract compliance may investigate said complaint, determine its validity, and determine whether the actions complained of impact the bidder's responsiveness on the specific procurement. Allegations of discrimination based on events, incidents or occurrences which are unrelated to the specific procurement will be placed in the bidder's file maintained in the vendor relations database and handled in accordance with the procedure established in the city's vendor relations subdivision, section 2-1465, et seq.

(b) **Determination of Violation of EBO Process**

Determination of violation of EBO process. Where the office of contract compliance investigates a complaint of discrimination that is related to the specific bid process, the details of that investigation, including findings, shall be recorded and maintained in the vendor relations database, pursuant to section 2-1471.

(c) **Office of Contract Compliance Determination of Non-Compliance**

Office of contract compliance determination of non-compliance. When, based upon the totality of the circumstances, the office of contract compliance determines that a bidder fails to satisfy the requirements of section 2-1448(a) of a city bid solicitation, the director of the office of contract compliance shall present a written determination of non-compliance to the Chief Procurement Officer which states the determination and lists the reasons for the determination. A bid that does not comply with the requirements set forth in section 2-1448(a) shall be deemed non-responsive and rejected.

### **Equal Business Opportunity Program Bid/RFP Submittals**

The Office of Contract Compliance will make any determinations of non-responsiveness. The covenant of non-discrimination, the outreach efforts documentation, the subcontractor project plan, and any other information required by OCC in the solicitation document pursuant to section 2-1448(b) must be completed in their entirety by each bidder and submitted with the other required bid documents in order for the bid to be considered as a responsive bid. Failure to timely submit these forms, fully completed, will result in the bid being considered as a non-responsive bid, and therefore, excluded from consideration.

### **Monitoring Of EBO Policy**

Upon execution of a contract with the City of Atlanta, the successful bidder's Subcontractor Project Plan will become a part of the contract between the bidder and the City of Atlanta. The Subcontractor Project Plan will be monitored by the City of Atlanta's Office of Contract Compliance for adherence with the plan. The successful bidder will be required to provide specific EBO information on a monthly basis that demonstrates the use of subcontractors and suppliers as indicated on the Subcontractor Project Plan. The failure of the successful bidder to provide the specific EBO information by the specified date each month shall be sufficient cause for the City to withhold approval of the successful bidder's invoices for progress payments, increase the amount of the successful bidder's retainage, or evoke any other penalties as set forth in the City of Atlanta Code of Ordinances, Section 2-1452.

### **Implementation of EEO Policy**

The City effectuates its EEO policy by adopting racial and gender work force availability for every contractor performing work for the City of Atlanta. These percentages are derived from the work force demographics set forth in the 2000 Census EEO file prepared by the United States Department of Commerce for the applicable labor pool normally utilized for the contract.

### **Monitoring of EEO Policy**

Upon award of a contract with the City of Atlanta, the successful bidder must submit a Contract Employment Report (CER), describing the racial and gender make-up of the firm's work force. If the CER indicates that the firm's demographic composition does not meet the adopted EEO goals, the firm will be required to submit an affirmative action plan setting forth the steps to be taken to reach the adopted goals. The CER and the affirmative action plan, if necessary, will become a part of the contract between the successful bidder and the City of Atlanta. Compliance with the EEO requirements will be monitored by the Office of Contract Compliance.

### **First Source Jobs Program Policy Statement**

It is the policy of the City of Atlanta to provide job opportunities to the residents of the City of Atlanta, whenever possible. Every contract with the City of Atlanta creates a potential pool of new employment opportunities. The prime contractor is expected to work with the First Source Jobs Program to fill at least 50% of all new entry-level jobs, which arise from this project, with residents of the City of Atlanta. For more specific information about the First Source Jobs Program contact:

**Michael Sterling  
Executive Director  
First Source Jobs Program  
Atlanta Workforce Development Agency  
818 Pollard Boulevard  
Atlanta, GA 30315  
(404) 546-3000**

### **Joint Venture Participation on City of Atlanta EBO Projects**

The City of Atlanta encourages, where economically feasible, the establishment of joint ventures to ensure prime contracting opportunities for all businesses, including non-discriminatory outreach efforts to utilize certified minority and female business enterprises on Eligible Projects. On selected projects valued at five million dollars and over, the Office of Contract Compliance shall determine on a project-by-project basis whether non-discriminatory outreach efforts to enter into a joint venture shall be required. On such Eligible Projects, joint venture member businesses must have different race ownership, different gender ownership or both. The minority and female business enterprise members of the joint venture on projects on which a Joint Venture is required must be certified as such by the Office of Contract Compliance, and the joint venture team shall include in its bid submittal the M/FBE certification number of each M/FBE joint venture member.

A joint venture may submit its agreement to the Office of Contract Compliance for pre-approval no later than fourteen (14) calendar days prior to the date set for receipt of bids on an Eligible Project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an Eligible Project.

#### **Components of a Joint Venture Agreement**

The Joint Venture agreement should include at a minimum:

- The initial capital investment of each venture partner.
- The proportional allocation of profits and losses to each venture partner.
- The sharing of the right to control the ownership and management of the joint venture.
- A detailed description of the discrete portion of work or tasks that will be performed by each of the venture partners.
- The method of, and responsibility for, accounting.
- The methods by which disputes are resolved.
- All other pertinent factors of the joint venture.

## **Equal Business Opportunity M/FBE Goals for this Project**

**Project No.: FC-8234-B, Central Passenger Terminal Complex (CPTC) Modernization, Airside Package 2.**

Part 1: All proponents must ensure that non-discriminatory practices are utilized to enter into a Joint Venture Agreement with a certified MBE or FBE in accordance with the City of Atlanta's EBO Ordinance. The Joint Venture Agreement, at the very least, should reflect details of the member company's/companies' involvement in the **FC-8234-B, Central Passenger Terminal Complex (CPTC) Modernization, Airside Package 2** project throughout the life of the contract (See Page 6).

Part 2: The successfully awarded Prime JV team will ensure that all proponents for any trade packages they let with an expected value of **five million dollars (\$5,000,000.00) or greater** must ensure that non-discriminatory practices are utilized to enter into a Joint Venture Agreement with a certified MBE or FBE in accordance with the City of Atlanta's EBO Ordinance. The Joint Venture Agreement, at the very least, should reflect details of the member company's/companies' involvement in the **FC-8234-B, Central Passenger Terminal Complex (CPTC) Modernization, Airside Package 2** project throughout the life of the contract (See Page 6).

Part 3: All proponents must ensure that non-discriminatory practices are utilized during efforts to engage minority and female subcontractors and suppliers throughout the life of the contract. All outreach efforts must be documented and included with this bid submittal.

The availability of certified minority and female firms for the procurement categories listed in this project are:

**17.5% AABE and 13% FBE**

Proponents are required to make a statement of commitment to utilizing good faith non-discriminatory outreach efforts and to identify firms that will be solicited in the various scope categories aimed at meeting or exceeding the above referenced availability goals. There will be no requirement to detail specific dollar amounts attributed to particular subcontractors at this stage of the procurement. However, as scopes are further defined and individual Component Guaranteed Maximum Price task orders (CGMPs) are issued, the winning proponent will be required to submit a specific diversity participation plan for each assigned CGMP for OCC's review and approval. Furthermore, if the expected value of any issued CGMP is five million dollars (\$5,000,000) or greater, the CMR must ensure that good faith efforts to enter into joint ventures are included in the CGMP procurements. All outreach efforts must be documented and included with each CGMP plan submittal.

Please be reminded that no Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the non-discrimination requirements of section 2-1448 on such Eligible Project. Details of the O.C.C. review process for determination of non-discrimination are outlined on page 2 of this document.

### **Equal Business Opportunity Program Reminders**

1. **Certification.** It is the prime contractor's responsibility to verify that MBEs and FBEs included on the Subcontractor Project Plan are certified by the City of Atlanta's Office of Contract Compliance, or have a certification application pending with the City of Atlanta's Office of Contract Compliance.
2. **Reporting.** The successful bidder must submit monthly EBO participation reports to the Office of Contract Compliance.
3. **Subcontractor Contact Form.** It is required that bidders list and submit information on all subcontractors they solicit for quotes, all subcontractors who contact them with regard to the project, and all subcontractors they have discussions with regarding the project. Failure to provide complete information on this form will result in your bid being declared non-responsive.
4. **EBO Ordinance.** The EBO Program is governed by the provisions of the EBO Ordinance set forth in the City of Atlanta Code Division 12, section 2 - 1441 through 2 -1464. The ordinance can be obtained from the City of Atlanta Clerk's Office at (404) 330-6032.
5. **Supplier Participation.** In order to receive full M/FBE credit, suppliers must manufacture or warehouse the materials, supplies, or equipment being supplied for use on the Eligible Project.
6. **OCC Registry of Certified Firms.** To access OCC's real time registry of vendors (certified or non-certified), visit our PRISM Compliance Management portal at: <https://pro.prismcompliance.com/default.aspx>. Next, click the drop down arrow under "Visit a Jurisdiction", select "City of Atlanta", and click "go!". Once there, you may search by Industry or Certification to obtain your desired results. You may also go to the website: [www.atlantaga.gov/contractcompliance](http://www.atlantaga.gov/contractcompliance) and scroll down to the section heading "Registry of Certified Firms" Click OCC's quarterly list to access the current directory of certified firms.

**COVENANT OF NON-DISCRIMINATION**

The undersigned understands that it is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City of Atlanta. The undersigned covenants that we have not discriminated, on the basis of race, gender or ethnicity, with regard to prime contracting, subcontracting or partnering opportunities. The undersigned further covenants that we will truthfully and fully complete the required forms EBO-2 and EBO-3 for each CGMP issued. Set forth below is the signature of an officer of the bidding entity with the authority to bind the entity.

\_\_\_\_\_  
Signature of Attesting Party

\_\_\_\_\_  
Title of Attesting Party

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared \_\_\_\_\_, the person who signed the above covenant in my presence.

\_\_\_\_\_  
Notary Public

Seal

**FORM EBO-1**



# **EQUAL BUSINESS OPPORTUNITY SUBCONTRACTOR PROJECT PLAN** **SUBCONTRACTOR/SUPPLIER UTILIZATION**

List all Majority, Minority and Female Business Enterprise subcontractors/suppliers, including lower tiers, to be used on this project.

Total Bid Amount									
Name of Sub-contractor/Supplier	City of Atlanta Supplier ID Number	Company Name, Address and Phone Number	City Of Atlanta Business License? (yes or no)	NAICS Code(s)	Type of Work to be Performed	Ownership of Business (see code below)	Certification No. and Expiration Date	Dollar (\$ Value of Work & Scope of Work	Percentage of Total Bid Amount
Total MBE%								Total FBE%	

Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise.  
APABE - Asian (Pacific Islander) American Business Enterprise

FC#/Project Name: \_\_\_\_\_ Proponent's Co. Name: \_\_\_\_\_  
Proponent's Contact Number: \_\_\_\_\_ Contact's Name: \_\_\_\_\_ (Please Print)  
Date: \_\_\_\_\_

# CONTRACTOR CONTACT FORM

**List all potential joint venture partners, protégés, subcontractors or suppliers (regardless of ethnicity/gender) that were contacted regarding this project.**

[illegible]

Name of Contractor/ Supplier (indicate if contact was for JV or protégé participation)	City of Atlanta Supplier Number	Company Name, Contact Name, Address and Phone Number	City Of Atlanta Business License? (Yes or No)	Type of Work Solicited for	Business Ownership (see code below)	Certification No. and Expiration Date	Results of Contact

Business Ownership Code: AABE - African American Business Enterprise, HABE - Hispanic American Business Enterprise, FBE - Female Business Enterprise. APABE - Asian (Pacific Islander) American Business Enterprise

Proponent Name: \_\_\_\_\_ Project Name: \_\_\_\_\_ FC#: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**First Source Job Information**

Company Name: \_\_\_\_\_

FC No.: \_\_\_\_\_

Project Name: \_\_\_\_\_

The following entry level positions will become available as a result of the above referenced contract with the City of Atlanta.

- 1.
- 2.
- 3.
- 4.
- 5.

Include a job description and all required qualifications for each position listed above.

Identify a company representative and contact phone number who will be responsible for coordinating with the First Source Jobs Program.

Company Representative: \_\_\_\_\_

Phone Number: \_\_\_\_\_

## First Source Jobs Agreement

**THIS AGREEMENT REGARDING THE USE OF THE FIRST SOURCE JOBS PROGRAM BY CONTRACTORS WITH THE CITY OF ATLANTA TO FILL ENTRY LEVEL JOBS is made and entered into by \_\_\_\_\_**

**This \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.**

The City of Atlanta requires the immediate beneficiary or primary contractor for every eligible project to enter into a First Source Jobs employment agreement. The contractor agrees to the following terms and conditions:

- The first source for finding employees to fill all entry level jobs Created by the eligible project will be the First Source Program.
- The contractor will make every effort to fill 50% of the entry level jobs created by this eligible project with applicants from the First Source Program.
- The contractor shall make good faith effort to reach the goal of this employment agreement.
- Details as to the number and description of each entry level job must me provided with the bid.
- The contractor shall comply with the spirit of the First Source Jobs Policy beyond the duration of this agreement and continue to make good faith attempts to hire employees of similar backgrounds to those participating in the First Source Program.
- The contractor as a condition of transfer, assignment or otherwise shall require the transferee to agree in writing to the terms of the employment Agreement.

Upon a determination that a beneficiary or contractor has failed to comply with the terms of this Agreement, the City may impose the following penalties based on the severity of the non-compliance:

- The City of Atlanta may withhold payment from the contractor.
- The City of Atlanta may withhold 10 percent of all future payments on the contract until the contractor is in compliance
- The City of Atlanta may refuse all future bids on city projects or applications for financials assistance in any form from the City until the contractor demonstrated that the First Source requirements have been met, or cancellation of the eligible project.
- The City of Atlanta may cancel the eligible project.

All terms stated herein can be found in the City of Atlanta Code of Ordinances Sections 5-8002 through 5-8005.

The undersigned hereby agrees to the terms and conditions set forth in this agreement.

\_\_\_\_\_  
Contractor

FORM 5